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DELAWARE P.S.C.

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Heather G. Hall, Manager Delaware  
Regulatory Affairs, External Issues & Compliance

April 29, 2010

**VIA Overnight Delivery**

Ms. Alisa C. Bentley  
Executive Secretary  
Delaware Public Service Commission  
861 Silver Lake Blvd., Suite 100  
Dover, DE 19904

Reference: Delmarva Power 2009 Annual Performance Report

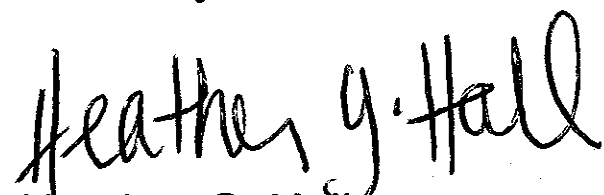
Dear Ms. Bentley:

Enclosed for filing with the Commission are the original and 10 copies of the Delmarva Power 2009 Annual Performance Report in compliance with Public Service Commission Regulation Docket No. 50, Order No. 7725, Section 10.

This filing was also made electronically with the Commission.

Please contact me or Len Beck at (302) 454-4839 with any questions relating to the above referenced matter.

Sincerely Yours,

  
Heather G. Hall

CC: Janis Dillard, PSC  
Arthur Padmore, DPA  
Gary Stockbridge, DPL  
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# **STATE OF DELAWARE**

## **Delaware Public Service Commission**

### **Electric Service Reliability and Quality Standards**

#### **Delmarva Power 2009 Annual Performance Report**

As stated in the Delaware Public Service Commission (DE-PSC) Regulation Docket No. 50, each electric distribution company (EDC) shall submit an annual Performance Report to the DE-PSC by April 30. The report requirement is contained in Section 10 of the Commission Order. This document is presented as Delmarva Power's 2009 Annual Performance Report. Section 10 of the Commission Order is reproduced in the report with Delmarva Power's response inserted after each sub-section.

## CERTIFICATION

William M. Gausman, an officer of the PHI Holding Incorporated, does hereby certify that the data and analysis set forth in the attached 2009 Annual Performance Report of Delmarva Power is true and correct based upon the collection and analysis of the data by authorized employees and representatives of the Company. I further certify that the necessary projects, maintenance programs and other actions are being performed and adequately funded by the Company and addressed in the capital and operations and maintenance budgets and plans to help achieve benchmark reliability levels and, at a minimum, to maintain the minimum reliability levels, as those terms are defined in the Electric Service Reliability and Quality Standards for our service territory in the State of Delaware. This certification is based upon my review of the data and analysis contained herein and my overall knowledge of the operations and practices of Delmarva Power.



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William M. Gausman  
Senior Vice President  
Asset Management and Planning

## 10.0 Annual Performance Report

10.1. By April 30 of each year, each EDC shall submit an annual Performance Report, summarizing the actual electric service reliability results. The report shall include the EDC's average three-year performance results, actual year-end performance measure results and an assessment of the results/effectiveness of the reliability objectives, planned actions and projects, programs, and load studies in achieving an acceptable reliability level.

### Response to 10.1:

Average Three-Year Performance results and actual year-end performance measure results are provided below:

Delmarva Power - Delaware Overall (Includes Transmission, Substation and Distribution Components)

Year	Reliability Indices - System (MEDs Exclusive)		
	SAIFI	CAIDI (Minutes)	SAIDI (Minutes)
2007	1.60	123	197
2008	1.47	145	213
2009	1.35	141	190
AVG (2007 - 2009)	1.47	136	200

Year	Reliability Indices - System (MEDs Exclusive)		
	SAIFI	CAIDI (Minutes)	SAIDI (Minutes)
Current Year (2009)	1.35	141	190

Benchmark of SAIDI for DP&L's Delaware Service Territory----->	295
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Delmarva Power's ("Delmarva")'s 2009 reliability performance met the established SAIDI benchmark of 295 minutes.

Delmarva will continue monitoring the performance of the distribution and transmission system closely to further determine trends, cause of interruptions and recommend the necessary corrective actions. Delmarva assesses the effectiveness of its programs by:

- Evaluating on an on-going basis, the performance of the distribution and transmission system by identifying areas that have significant impact on the performance of multiple breaker operations, multiple fuse operations and CEMI (Customers Experiencing Multiple Interruptions).
- Performing quality assurance on recommended work by ensuring implementation based on Standards and design.
- Analyzing performance data for confirming the effectiveness of remedial



actions.

- Conducting Circuit's load study and developing recommendations for proactive actions.

The following programs/projects are performed in support of maintaining a reliable system.

- Infrared Circuit Scans (also performed on cyclic basis)
- Vegetation Management
- Wood Pole Inspections & Treatment
- Capital Projects
- Customer Inquiry Responses
- System Maintenance
- Transmission and Distribution Line Patrols
- Multiple Interruption Evaluation (includes multiple breaker/fuse operations)

Information presented in the following table provides an update to the information contained in Delmarva's "2010 Reliability Studies and Planning Report."

Reliability & Load Driven Projects in Delaware 2009 Planning Report Project Status			
Description	Planned Completion Date	Status as of April 1, 2010	Driver
Brookside Substation DE0223: Patrolled and Thermal scanned to help identify possible problems and then correct deficiencies. Inspect trees and trimmed as necessary. Installed recloser on Marrow's road. Installed tree wire in Robscott Manor.	9/30/2009	Project Completed	Reliability
Hockessin Substation DE0243: Patrolled and Thermal scanned to help identify possible problems and then correct deficiencies. Inspect trees and trimmed as necessary. Installed recloser on Snuff Mill Road.	9/30/2009	Project Completed	Reliability
Milford Cross Road Substation DE0291: Patrolled and Thermal scanned to help identify possible problems and then correct deficiencies. Inspect trees and trimmed as necessary. Installed pole reflectors. Installed tree wire on Corner Ketch Road.	9/30/2009	Project Completed	Reliability
Brandywine Substation DE0729: Patrolled and Thermal scanned to help identify possible problems and then correct deficiencies. Inspect trees and trimmed as necessary. Replaced vintage wire on 8th street. Installed one recloser. Installed tree wire on 16th & 17th Streets.	9/30/2009	Project Completed	Reliability

Reliability & Load Driven Projects in Delaware 2009 Planning Report Project Status			
Description	Planned	Status as of April 1, 2010	Driver
Mount Pleasant Substation DE2540: Patrolled and Thermal scanned to help identify possible problems and then correct deficiencies. Inspect trees and trimmed as necessary. Installed two reclosers. Reconductoring on Choptank Road.	9/30/2009	Project Completed	Reliability
Rehobeth Substation DE0519: Install a 3-phase recloser; Replace sectionalizing switch; Patrol and thermal scan to help identify possible problems and then correct deficiencies; Inspect and tree trim as necessary	9/30/2009	Project Completed	Reliability
Millsboro Substation DE2280: Patrol and thermal scan to help identify possible problems and then correct deficiencies; Inspect and tree trim as necessary; Replace approximately 7,000 feet of deteriorated URD cable	9/30/2009	Project Completed	Reliability
Kent Substation DE2233: Install gang operated switch; Install cutouts on CSP transformers and additional lightning arresters/ grounding; Thermal scanning to help identify possible problems and then correct deficiencies; Inspect and tree trim as necessary.	9/30/2009	Project Completed	Reliability
Cheswold Substation DE2218: Install two-gang operated switches to improve operation; Patrol and thermal scan to help identify possible problems and then correct deficiencies; Install cutouts on CSP transformers and additional lightning arresters/ grounding; Inspect and tree trim as necessary.	9/30/2009	Project Completed	Reliability
Nelson Substation DE0515: Rebuild 1.6 miles of #4 Cu with 1/0AAC on Bi State Road; Install a 3 phase recloser; Install additional lightning arresters and grounding; Feeder will be thermal scanned and to help identify possible problems and then correct deficiencies; Reconductor 2.3 miles along Waller Road from 1/0AL to 477AAC wire.	9/30/2009 12/30/2009	Project Completed Project Completed	Reliability Reliability

10.2. *Delivery facilities year-end performance measures, as established in Section 4, paragraph 1 shall be reported as follows:*

Section 4, paragraph 1 is reproduced here for reference

4.0. Reliability and Quality Performance Benchmarks

4.1. The measurement of reliability and quality performance shall be based on annual SAIDI and Constrained Hours of Operation measures for each EDC. The SAIDI calculation shall include all Delaware customer outages, excluding major events, and shall be reported along with its SAIFI and CAIDI components, subdivided by its distribution, substation and transmission components. The Constrained Hours of Operations shall be based on peninsula (DPL Zone) transmission system contingency limitations that require the dispatch of off-cost generation, excluding generation or transmission forced outages, generation or transmission related construction or any unrelated third party actions.

10.2.1. *SAIDI, SAIFI, and CAIDI measures:*

10.2.1.1. *Current year and three-year average reflecting Delaware performance, classified by distribution, substation and transmission components*

**Response to 10.2.1.1:**

Distribution Component Only:

Year	Reliability Indices - Distribution (MEDs Exclusive)		
	SAIFI	CAIDI (Minutes)	SAIDI (Minutes)
2007	1.44	121	174
2008	1.40	146	204
2009	1.26	147	183
AVG (2007 - 2009)	1.37	138	187

Year	Reliability Indices - Distribution (MEDs Exclusive)		
	SAIFI	CAIDI (Minutes)	SAIDI (Minutes)
Current Year (2009)	1.26	147	183

Substation Component Only:

Year	Reliability Indices - Substation (MEDs Exclusive)		
	SAIFI	CAIDI (Minutes)	SAIDI (Minutes)
2007	0.14	151	21
2008	0.07	127	9
2009	0.09	79	7
AVG (2007 - 2009)	0.10	119	12

Year	Reliability Indices - Substation (MEDs Exclusive)		
	SAIFI	CAIDI (Minutes)	SAIDI (Minutes)
Current Year (2009)	0.09	79	7

Transmission Component Only:

Year	Reliability Indices - Transmission (MEDs Exclusive)		
	SAIFI	CAIDI (Minutes)	SAIDI (Minutes)
2007	0.03	58	2
2008	0.00	0	0
2009	0.00	0	0
AVG (2007 - 2009)	0.01	19	1

Year	Reliability Indices - Transmission (MEDs Exclusive)		
	SAIFI	CAIDI (Minutes)	SAIDI (Minutes)
Current Year (2009)	0.00	0	0

10.2.1.2. *Current year for each feeder circuit providing service to Delaware customers, regardless of state origin.*

**Response to 10.2.1.2:**

Note the majority of feeders with relatively high SAIFI values are included in the Priority Feeder Program.

Period: 01/01/2009 Thru 12/31/2009 - MEDs Exclusive					
FEEDER INFORMATION			Reliability Indices at Feeder Level		
DISTRICT	SUBSTATION	CKT NO.	SAIFI	CAIDI (Minutes)	SAIDI (Minutes)
CHRISTIANA	OLD KENNETT ROAD	DE0002	0.00	0	0
CHRISTIANA	NORTH WILMINGTON	DE0008	0.00	0	0
CHRISTIANA	NORTH WILMINGTON	DE0009	0.00	0	0
CHRISTIANA	NORTH WILMINGTON	DE0010	0.00	0	0
CHRISTIANA	NORTH WILMINGTON	DE0011	0.99	187	185
CHRISTIANA	NORTH WILMINGTON	DE0012	0.00	260	1
CHRISTIANA	ROGERS ROAD	DE0014	0.01	90	1
CHRISTIANA	ROGERS ROAD	DE0015	0.00	0	0
CHRISTIANA	ROGERS ROAD	DE0016	2.15	431	928
CHRISTIANA	ROGERS ROAD	DE0017	0.25	98	25
CHRISTIANA	SILVERSIDE ROAD	DE0018	1.08	170	184
CHRISTIANA	SILVERSIDE ROAD	DE0019	5.37	247	1323
CHRISTIANA	SILVERSIDE ROAD	DE0020	0.05	308	15
CHRISTIANA	CHRISTIANA	DE0092	0.04	241	9
CHRISTIANA	CHRISTIANA	DE0093	0.00	0	0
CHRISTIANA	CHRISTIANA	DE0094	0.00	0	0
CHRISTIANA	CHRISTIANA	DE0095	0.00	0	0
CHRISTIANA	CHRISTIANA	DE0096	0.00	0	0
CHRISTIANA	CHRISTIANA	DE0097	7.44	90	667
CHRISTIANA	CHRISTIANA	DE0098	0.00	0	0
CHRISTIANA	CHRISTIANA	DE0099	0.01	113	1
CHRISTIANA	CHRISTIANA	DE0100	4.00	55	220
CHRISTIANA	CHRISTIANA	DE0101	0.00	0	0
CHRISTIANA	CHRISTIANA	DE0102	0.00	0	0
CHRISTIANA	CHRISTIANA	DE0103	0.00	0	0
CHRISTIANA	CHRISTIANA	DE0104	0.12	86	10
CHRISTIANA	CHRISTIANA	DE0105	0.25	91	23
CHRISTIANA	CHRISTIANA	DE0106	0.17	268	46
CHRISTIANA	CHRISTIANA	DE0107	0.01	360	4
CHRISTIANA	CHRISTIANA	DE0108	1.50	81	121
CHRISTIANA	CHRISTIANA	DE0109	0.00	0	0
CHRISTIANA	CHRISTIANA	DE0110	0.00	0	0
CHRISTIANA	CHRISTIANA	DE0111	0.01	117	1
CHRISTIANA	CHRISTIANA	DE0112	3.00	27	79
CHRISTIANA	CHRISTIANA	DE0113	1.00	187	187
CHRISTIANA	CHRISTIANA	DE0114	0.00	0	0
CHRISTIANA	CHRISTIANA	DE0116	0.01	158	1
CHRISTIANA	CHRISTIANA	DE0117	0.00	0	0
CHRISTIANA	CHRISTIANA	DE0118	1.16	103	120
CHRISTIANA	CHRISTIANA	DE0119	0.00	0	0
CHRISTIANA	WEST WILMINGTON	DE0130	1.33	202	268
CHRISTIANA	WEST WILMINGTON	DE0131	1.11	112	125
CHRISTIANA	WEST WILMINGTON	DE0132	0.02	344	7
CHRISTIANA	WEST WILMINGTON	DE0133	0.26	227	58
CHRISTIANA	WEST WILMINGTON	DE0134	0.09	177	16
CHRISTIANA	WEST WILMINGTON	DE0135	1.72	112	192
CHRISTIANA	WEST WILMINGTON	DE0136	0.50	158	79
CHRISTIANA	WEST WILMINGTON	DE0137	0.33	149	48

Period: 01/01/2009 Thru 12/31/2009 - MEDs Exclusive					
FEEDER INFORMATION			Reliability Indices at Feeder Level		
DISTRICT	SUBSTATION	CKT NO.	SAIFI	CAIDI (Minutes)	SAIDI (Minutes)
CHRISTIANA	WEST	DE0140	0.30	544	161
CHRISTIANA	WEST	DE0141	0.49	74	36
CHRISTIANA	WEST	DE0142	0.42	118	50
CHRISTIANA	WEST	DE0143	0.13	230	29
CHRISTIANA	WEST	DE0144	2.53	169	428
CHRISTIANA	WEST	DE0145	0.67	168	112
CHRISTIANA	WEST	DE0146	0.67	167	112
CHRISTIANA	WEST	DE0147	1.68	74	124
CHRISTIANA	WEST	DE0148	1.16	62	72
CHRISTIANA	WEST	DE0149	0.62	182	112
CHRISTIANA	FIFTH STREET	DE0151	0.00	0	0
CHRISTIANA	FIFTH STREET	DE0152	0.00	0	0
CHRISTIANA	FIFTH STREET	DE0153	0.00	0	0
CHRISTIANA	FIFTH STREET	DE0154	0.00	0	0
CHRISTIANA	FIFTH STREET	DE0155	0.00	0	0
CHRISTIANA	FIFTH STREET	DE0156	0.00	0	0
CHRISTIANA	NEW CASTLE	DE0160	6.65	81	538
CHRISTIANA	NEW CASTLE	DE0161	1.16	132	152
CHRISTIANA	NEW CASTLE	DE0162		76	
CHRISTIANA	NEW CASTLE	DE0163	2.21	164	362
CHRISTIANA	NEW CASTLE	DE0164	1.49	31	46
CHRISTIANA	NEW CASTLE	DE0165	0.54	223	120
CHRISTIANA	NEW CASTLE	DE0166	0.60	151	90
CHRISTIANA	NEW CASTLE	DE0167	1.43	89	127
CHRISTIANA	NEW CASTLE	DE0168	0.50	57	29
CHRISTIANA	NEW CASTLE	DE0169	1.17	165	192
CHRISTIANA	CHAPEL	DE0172	1.08	124	134
CHRISTIANA	GLASGOW	DE0175	0.02	231	4
CHRISTIANA	GLASGOW	DE0176	1.02	81	82
CHRISTIANA	BASIN ROAD	DE0181	0.62	207	127
CHRISTIANA	BASIN ROAD	DE0182	0.90	181	162
CHRISTIANA	BASIN ROAD	DE0183	1.04	84	88
CHRISTIANA	BASIN ROAD	DE0184	0.49	581	282
CHRISTIANA	DELAWARE CITY	DE0187	0.00	0	0
CHRISTIANA	DELAWARE CITY	DE0188	0.00	0	0
CHRISTIANA	DELAWARE CITY	DE0189	0.00	0	0
CHRISTIANA	REYBOLD	DE0190	0.70	161	113
CHRISTIANA	REYBOLD	DE0191	0.09	714	65
CHRISTIANA	REYBOLD	DE0192	0.02	179	3
CHRISTIANA	REYBOLD	DE0193	1.43	106	151
CHRISTIANA	EDGE MOOR	DE0201	0.00	0	0
CHRISTIANA	EDGE MOOR	DE0202	1.06	141	149
CHRISTIANA	EDGE MOOR	DE0203	0.16	131	21
CHRISTIANA	EDGE MOOR	DE0204	0.00	0	0
CHRISTIANA	EDGE MOOR	DE0207	0.00	0	0
CHRISTIANA	EDGE MOOR	DE0208	0.00	0	0
CHRISTIANA	EDGE MOOR	DE0209	0.42	188	79
CHRISTIANA	EDGE MOOR	DE0212	2.01	83	168
CHRISTIANA	EDGE MOOR	DE0213	2.14	176	376
CHRISTIANA	EDGE MOOR	DE0216	3.13	89	279
CHRISTIANA	EDGE MOOR	DE0217	2.13	102	217
CHRISTIANA	EDGE MOOR	DE0218	0.00	0	0
CHRISTIANA	EDGE MOOR	DE0219	0.00	0	0
CHRISTIANA	BROOKSIDE ROAD	DE0221	3.04	101	307
CHRISTIANA	BROOKSIDE ROAD	DE0222	0.16	142	23
CHRISTIANA	BROOKSIDE ROAD	DE0223	3.74	92	343
CHRISTIANA	MONTCHANIN ROAD	DE0231	4.49	142	637
CHRISTIANA	MONTCHANIN ROAD	DE0232	1.73	135	233
CHRISTIANA	POINT BREEZE	DE0236	0.32	156	50
CHRISTIANA	POINT BREEZE	DE0237	0.17	439	73

Period: 01/01/2009 Thru 12/31/2009 - MEDs Exclusive					
FEEDER INFORMATION			Reliability Indices at Feeder Level		
DISTRICT	SUBSTATION	CKT NO.	SAIFI	CAIDI (Minutes)	SAIDI (Minutes)
CHRISTIANA	POINT BREEZE	DE0238	0.36	235	84
CHRISTIANA	POINT BREEZE	DE0239	0.21	161	35
CHRISTIANA	HOCKESSIN	DE0241	1.65	365	603
CHRISTIANA	HOCKESSIN	DE0242	0.00	0	0
CHRISTIANA	HOCKESSIN	DE0243	4.85	162	786
CHRISTIANA	HOCKESSIN	DE0244	2.23	117	261
CHRISTIANA	HOCKESSIN	DE0245	1.41	330	466
CHRISTIANA	CHURCHMANS	DE0251	0.24	372	89
CHRISTIANA	CHURCHMANS	DE0252	0.32	379	122
CHRISTIANA	CHURCHMANS	DE0253	0.95	287	273
CHRISTIANA	CHURCHMANS	DE0254	1.07	152	163
CHRISTIANA	CHURCHMANS	DE0255	0.28	296	84
CHRISTIANA	CHURCHMANS	DE0256	0.40	148	60
CHRISTIANA	CHESTNUT RUN	DE0260	0.00	0	0
CHRISTIANA	CHESTNUT RUN	DE0261	0.00	0	0
CHRISTIANA	CHESTNUT RUN	DE0262	0.00	0	0
CHRISTIANA	CHESTNUT RUN	DE0263	0.71	409	292
CHRISTIANA	CHESTNUT RUN	DE0264	0.00	0	0
CHRISTIANA	CHESTNUT RUN	DE0265	1.13	52	59
CHRISTIANA	SILVERSIDE ROAD	DE0272	1.73	102	177
CHRISTIANA	SILVERSIDE ROAD	DE0273	1.26	96	120
CHRISTIANA	SILVERSIDE ROAD	DE0274	0.39	226	88
CHRISTIANA	SILVERSIDE ROAD	DE0276	0.21	416	88
CHRISTIANA	NAAMANS ROAD	DE0280	0.00	0	0
CHRISTIANA	NAAMANS ROAD	DE0281	1.16	135	157
CHRISTIANA	NAAMANS ROAD	DE0282	3.84	104	400
CHRISTIANA	TALLEYVILLE	DE0284	0.32	201	65
CHRISTIANA	TALLEYVILLE	DE0285	0.47	349	164
CHRISTIANA	TALLEYVILLE	DE0286	0.36	154	55
CHRISTIANA	TALLEYVILLE	DE0287	0.14	176	24
CHRISTIANA	TALLEYVILLE	DE0288	0.08	440	35
CHRISTIANA	TALLEYVILLE	DE0289	1.10	189	207
CHRISTIANA	MILLFORD CROSS	DE0290	2.08	305	633
CHRISTIANA	MILLFORD CROSS	DE0291	2.35	273	642
CHRISTIANA	MILLFORD CROSS	DE0292	2.61	242	630
CHRISTIANA	MILLFORD CROSS	DE0293	3.99	212	843
CHRISTIANA	TENTH STREET	DE0382	0.00	0	0
CHRISTIANA	TENTH STREET	DE0383	0.00	0	0
CHRISTIANA	TENTH STREET	DE0384	0.01	204	2

Period: 01/01/2009 Thru 12/31/2009 - MEDs Exclusive					
FEEDER INFORMATION			Reliability Indices at Feeder Level		
DISTRICT	SUBSTATION	CKT NO.	SAIFI	CAIDI (Minutes)	SAIDI (Minutes)
MILLSBORO	BETHANY	DE0500	0.18	212	37
MILLSBORO	BETHANY	DE0501	0.16	102	17
MILLSBORO	BETHANY	DE0502	1.27	188	240
MILLSBORO	BETHANY	DE0503	1.07	183	196
MILLSBORO	BRIDGEVILLE	DE0504	0.02	139	3
MILLSBORO	BRIDGEVILLE	DE0505	0.12	59	7
MILLSBORO	LAUREL	DE0506	1.63	79	129
MILLSBORO	LAUREL	DE0507	0.62	94	59
MILLSBORO	LAUREL	DE0508	1.27	43	55
MILLSBORO	LAUREL	DE0509	1.39	41	57
MILLSBORO	MIDWAY	DE0510	0.34	144	49
MILLSBORO	WYOMING	DE0512	0.00	0	0
MILLSBORO	WYOMING	DE0513	0.09	97	9
MILLSBORO	NELSON	DE0514	0.00	0	0
SALISBURY	NELSON	DE0515	0.00	0	0
MILLSBORO	NORTH SEAFORD	DE0516	0.78	158	122
MILLSBORO	NORTH SEAFORD	DE0517	2.94	62	181
MILLSBORO	BRIDGEVILLE	DE0518	15.50	505	7828
MILLSBORO	REHOBOTH	DE0519	2.79	40	112
MILLSBORO	REHOBOTH	DE0520	0.38	158	61
MILLSBORO	REHOBOTH	DE0521	0.08	72	6
MILLSBORO	REHOBOTH	DE0522	0.82	160	131
MILLSBORO	REHOBOTH	DE0523	0.83	71	59
MILLSBORO	SUSSEX	DE0524	1.21	121	147
MILLSBORO	SUSSEX	DE0525	1.37	53	73
MILLSBORO	SUSSEX	DE0526	0.54	96	52
MILLSBORO	FIVE POINTS	DE0527	0.22	162	35
MILLSBORO	FIVE POINTS	DE0528	4.17	52	218
MILLSBORO	FIVE POINTS	DE0530	0.55	123	67
MILLSBORO	CEDAR NECK	DE0531	1.91	138	263
MILLSBORO	CEDAR NECK	DE0532	1.11	132	147
MILLSBORO	CEDAR NECK	DE0533	1.46	143	208
MILLSBORO	GREENWOOD	DE0558	1.10	53	58



Period: 01/01/2009 Thru 12/31/2009 - MEDs Exclusive					
FEEDER INFORMATION			Reliability Indices at Feeder Level		
DISTRICT	SUBSTATION	CKT NO.	SAIFI	CAIDI (Minutes)	SAIDI (Minutes)
CHRISTIANA	HARMONY	DE0601	1.29	138	178
CHRISTIANA	HARMONY	DE0602	2.13	148	315
CHRISTIANA	HARMONY	DE0603	1.63	213	345
CHRISTIANA	HARMONY	DE0604	1.96	156	305
CHRISTIANA	HARMONY	DE0605	0.10	125	12
CHRISTIANA	HARMONY	DE0606	5.31	148	784
CHRISTIANA	HARMONY	DE0607	0.01	2072	10
CHRISTIANA	HARES CORNER	DE0610	2.23	309	687
CHRISTIANA	HARES CORNER	DE0611	1.10	118	130
CHRISTIANA	HARES CORNER	DE0612	1.38	79	109
CHRISTIANA	HARES CORNER	DE0613	0.47	101	48
CHRISTIANA	DARLEY ROAD	DE0621	0.46	241	110
CHRISTIANA	DARLEY ROAD	DE0622	0.05	400	19
CHRISTIANA	DARLEY ROAD	DE0623	1.43	342	490
CHRISTIANA	DARLEY ROAD	DE0624	0.30	386	116
CHRISTIANA	DARLEY ROAD	DE0625	0.70	287	201
CHRISTIANA	MILLTOWN ROAD	DE0640	2.92	137	401
CHRISTIANA	MILLTOWN ROAD	DE0645	0.20	219	44
CHRISTIANA	MILLTOWN ROAD	DE0647	0.37	443	164
CHRISTIANA	MILLTOWN ROAD	DE0648	1.30	66	86
CHRISTIANA	MILLTOWN ROAD	DE0649	1.22	74	90
CHRISTIANA	LITTLE FALLS	DE0658	2.33	149	347
CHRISTIANA	LITTLE FALLS	DE0659	4.46	209	932
CHRISTIANA	FAULK ROAD	DE0662	0.28	109	30
CHRISTIANA	FAULK ROAD	DE0665	0.32	227	72
CHRISTIANA	FAULK ROAD	DE0667	1.28	97	125
CHRISTIANA	FAULK ROAD	DE0672	0.14	187	25
CHRISTIANA	FAULK ROAD	DE0675	0.39	223	87
CHRISTIANA	KEENEY 138KV	DE0691	0.05	70	4
CHRISTIANA	KEENEY 138KV	DE0692	0.10	218	22
CHRISTIANA	KEENEY 138KV	DE0693	0.27	199	54
CHRISTIANA	SUNSET LAKE	DE0700	0.00	372	2
CHRISTIANA	SUNSET LAKE	DE0701	0.00	0	0
CHRISTIANA	SUNSET LAKE	DE0702	0.04	102	4
CHRISTIANA	SUNSET LAKE	DE0704	2.01	70	140
CHRISTIANA	SUNSET LAKE	DE0705	0.49	258	126
CHRISTIANA	SUNSET LAKE	DE0706	0.00	0	0
CHRISTIANA	SUNSET LAKE	DE0707	0.02	140	3
CHRISTIANA	BRANDYWINE	DE0721	0.00	0	0
CHRISTIANA	BRANDYWINE	DE0722	0.00	0	0
CHRISTIANA	BRANDYWINE	DE0723	2.09	48	99
CHRISTIANA	BRANDYWINE	DE0724	0.35	247	86
CHRISTIANA	BRANDYWINE	DE0725	0.00	0	0
CHRISTIANA	BRANDYWINE	DE0726	0.00	0	0
CHRISTIANA	BRANDYWINE	DE0727	0.10	216	22
CHRISTIANA	BRANDYWINE	DE0728	1.36	282	383
CHRISTIANA	BRANDYWINE	DE0729	0.18	172	31
CHRISTIANA	BRANDYWINE	DE0730	0.00	0	0

Period: 01/01/2009 Thru 12/31/2009 - MEDs Exclusive					
FEEDER INFORMATION			Reliability Indices at Feeder Level		
DISTRICT	SUBSTATION	CKT NO.	SAIFI	CAIDI (Minutes)	SAIDI (Minutes)
CHRISTIANA	BRANDYWINE	DE0731	0.00	0	0
CHRISTIANA	BRANDYWINE	DE0732	0.00	0	0
CHRISTIANA	BRANDYWINE	DE0733	0.13	127	16
CHRISTIANA	BRANDYWINE	DE0734	0.00	0	0
CHRISTIANA	MERMAID	DE0742	2.06	197	406
CHRISTIANA	MERMAID	DE0743	1.10	146	161
CHRISTIANA	MERMAID	DE0744	4.47	332	1480
CHRISTIANA	MERMAID	DE0745	2.09	120	251
CHRISTIANA	MERMAID	DE0746	3.13	284	889
CHRISTIANA	MERMAID	DE0747	1.30	300	389
CHRISTIANA	BEAR	DE0750	1.14	103	118
CHRISTIANA	BEAR	DE0751	0.01	367	3
CHRISTIANA	BEAR	DE0752	0.12	148	18
CHRISTIANA	BEAR	DE0753	1.11	164	181
CHRISTIANA	BEAR	DE0754	0.19	161	30
CHRISTIANA	BEAR	DE0755	0.66	168	112
CHRISTIANA	BEAR	DE0756	1.17	84	98
CHRISTIANA	BEAR	DE0757	1.32	59	78
MILLSBORO	FRANKFORD	DE2207	1.77	132	234
MILLSBORO	FRANKFORD	DE2208	2.70	110	297
MILLSBORO	MILFORD	DE2211	2.14	149	319
MILLSBORO	CHESWOLD	DE2218	0.65	187	121
MILLSBORO	CLAYTON	DE2225	2.18	101	220
MILLSBORO	CLAYTON	DE2226	0.85	244	206
MILLSBORO	KENT	DE2228	0.87	129	112
MILLSBORO	HARRINGTON	DE2229	0.36	122	44
MILLSBORO	HARRINGTON	DE2230	3.93	180	707
MILLSBORO	KENT	DE2233	0.84	270	226
MILLSBORO	FELTON	DE2235	0.72	143	103
MILLSBORO	HARBESON	DE2237	1.14	168	191
MILLSBORO	KENT	DE2241	1.15	130	149
MILLSBORO	FELTON	DE2247	0.27	101	28
MILLSBORO	CHESWOLD	DE2249	0.00	0	0
MILLSBORO	HARBESON	DE2270	2.00	375	749
MILLSBORO	MILLSBORO	DE2271	2.30	78	180
MILLSBORO	MILLSBORO	DE2272	2.29	56	127
MILLSBORO	HARRINGTON	DE2273	1.84	78	143
MILLSBORO	MILFORD	DE2278	1.15	90	103
MILLSBORO	MILLSBORO	DE2280	4.50	145	655

Period: 01/01/2009 Thru 12/31/2009 - MEDs Exclusive					
FEEDER INFORMATION			Reliability Indices at Feeder Level		
DISTRICT	SUBSTATION	CKT NO.	SAIFI	CAIDI (Minutes)	SAIDI (Minutes)
CHRISTIANA	CEDAR CREEK	DE2500	0.80	140	112
CHRISTIANA	TOWNSEND	DE2511	2.21	145	321
CHRISTIANA	TOWNSEND	DE2512	2.64	164	433
CHRISTIANA	RED LION	DE2520	2.52	103	260
CHRISTIANA	LUMS POND	DE2531	1.31	66	86
CHRISTIANA	LUMS POND	DE2532	1.46	45	65
CHRISTIANA	LUMS POND	DE2533	3.14	83	262
CHRISTIANA	MOUNT PLEASANT	DE2540	2.99	65	194
CHRISTIANA	MOUNT PLEASANT	DE2541	2.95	82	241
CHRISTIANA	MOUNT PLEASANT	DE2542	3.83	90	343
CHRISTIANA	SUNSET LAKE	DE2552	0.00	201	1
CHRISTIANA	WEST	DE3302	1.00	28	28
CHRISTIANA	WEST	DE3304	0.00	0	0
CHRISTIANA	SILVERBROOK	DE3305	1.00	218	218
CHRISTIANA	SILVERBROOK	DE3306	0.00	0	0
CHRISTIANA	SILVERBROOK	DE3307	0.11	703	78
CHRISTIANA	KIAMENSI	DE3312	4.00	157	628
CHRISTIANA	KEENEY EHV	DE3313	0.00	0	0
CHRISTIANA	KEENEY EHV	DE3315	0.00	0	0
CHRISTIANA	KEENEY EHV	DE3317	0.00	0	0
CHRISTIANA	GLASGOW	DE3325	0.00	0	0
CHRISTIANA	CARRCROFT	DE3331	0.14	98	14
CHRISTIANA	SILVERSIDE ROAD	DE3332	0.00	0	0
CHRISTIANA	DARLEY ROAD	DE3333	0.00	0	0
CHRISTIANA	KIAMENSI	DE3342	1.00	135	135
CHRISTIANA	HARMONY	DE3351	0.33	141	47
CHRISTIANA	HARMONY	DE3352	3.20	128	409
CHRISTIANA	HARMONY	DE3353	189.71	48	9061
CHRISTIANA	HARMONY	DE3354		376	
CHRISTIANA	CHAPEL	DE3358	0.00	0	0

### 10.2.2. Constrained hours of Operation:

#### 10.2.2.1. Current year and three-year average for the EDC's DPL Zone transmission system

#### Response to 10.2.2.1:

Year	Trigger Hours	Actual Congestion Hours Counting Toward Trigger	Actual Congestion Hours Not Counting Toward Trigger	Total Congestion Hours
2007	600	199	215	414
2008	600	185	90	275
2009	600	87	42	129
AVG (2007 - 2009)		157	116	273

Year	Trigger Hours	Actual Congestion Hours Counting Toward Trigger	Actual Congestion Hours Not Counting Toward Trigger	Total Congestion Hours
2009	600	87	42	129

10.2.2.2. *Current year for the EDC's DPL Zone, classified by cause.*

**Response to 10.2.2.2:**

Constrained Hours of Operation – 2009

Cause	Hours
Load	45
Planned Transmission Maintenance	42
Forced Generation	0
Forced Transmission Maintenance	6
Construction	36
Forced Majeure	0
<b>Total</b>	<b>129</b>

- 10.3. *The Performance Report shall identify 2% of distribution feeders or 10 feeders, whichever is more, serving at least one Delaware customer, that are identified by the utility as having the poorest reliability. The EDC shall identify the method used to determine the feeders with poorest reliability and shall indicate any planned corrective actions to improve feeder performance and target dates for completion or explain why no action is required. The EDC shall ensure that feeders, identified as having the poorest reliability, shall not appear in any two consecutive Performance Reports without initiated corrective action.*

**Response to 10.3:**

Methodology of Identifying Poor-Performing Circuits in Delaware Service Territory – 2010

(A) Number of Feeders Identified = 10

This is a greater number than  $297 \text{ feeders} \times 2\% = 6 \text{ Feeders}$

(B) Tools and Data Used

- Delmarva uses CPI (Composite Performance Index) methodology that is designed specifically for feeder evaluation.
- In order to expedite the improvement process on the poor-performing feeders, Delmarva uses feeder interruption data for the 12-month period starting from October 1, 2008 through September 30, 2009 for performance evaluation.

(C) Process and Methodology

- MED (Major Event Day) exclusive data based on IEEE STD 1366-2003 was used.

- The CPI feeder evaluation methodology ranks feeders based on combinations of (1) SAIFI, (2) SAIDI, (3) Total Outage Duration, and (4) Number of Sustained Interruptions. A User's Guide of CPI is included as attachment "A" in this section.
- Ten (10) feeders with the highest CPI values are identified.

## Attachment A

### PHI Feeder Performance CPI Model User's Guide

The Company uses a composite performance index (CPI), unique to Potomac Electric Power Company, Delmarva Power and Atlantic City Electric Company to evaluate and rank feeder performance. CPI was developed at PEPCO many years ago and has undergone recent refinement by PA Consulting (formerly PHB-Hagler Bailly). CPI allows the Company to track feeder performance and incorporate all appropriate variables, and to track results of improvement efforts.

#### CONCEPTUAL FRAMEWORK

CPI is not only calculated on basic variables (interruptions, duration, customers affected, etc.), but also on averaged or combined indices such as System Average Frequency (SAIF) and System Average Interruption Duration (SAID). In total, CPI is composed of four measurements that are applied to each feeder:

- Number of Interruptions (NI),
- Number of Customer Hours of Interruption (CHI),
- System Average Frequency (SAIF), and
- System Average Interruption Duration (SAID).

The basic concept behind CPI and the statistical model is to plot a feeder in four dimensions and measure its distance from the point representing the "ideal" feeder. It is a statistical effort to locate any *outliers* in these categories or a combination of them. It is a sort of weighted average of the four indicators from different angles in a space.

However, because the four measures are not independent of each other, it requires a linear transformation (scaling and rotating) of the original data as well as a reduction of dimensions considered relevant. To understand the dependence between indicators/measures and the reduction in dimensions, consider the case of determining the winner of a decathlon. Even though there are ten original tests (dimensions), the winner should be the athlete that proves best in perhaps four underlying characteristics (principal components): velocity, strength, resistance and agility. Several tests are correlated as they address similar abilities to differing degrees:

- Velocity – short races, hurdles, broad jump, high jump, javelin, pole vault
- Strength – broad jump, high jump, javelin, pole vault, shot put, discus
- Resistance – long races, and the set of all tests together
- Agility – hurdles, pole vault, high jump

To avoid redundancy, the method to determine the winner should try to extract the scores on the four principal components and calculate the results based on them. In the case of CPI, the method for determining feeder performance starts with four variables and creates Principal Components, and mean and standard deviations for four variables. It then transforms the raw value of the feeder and the origin to calculate the CPI index over three principal components.

*Figure 1* illustrates the CPI concept spatially, and *Figure 2* explains CPI process in detail.

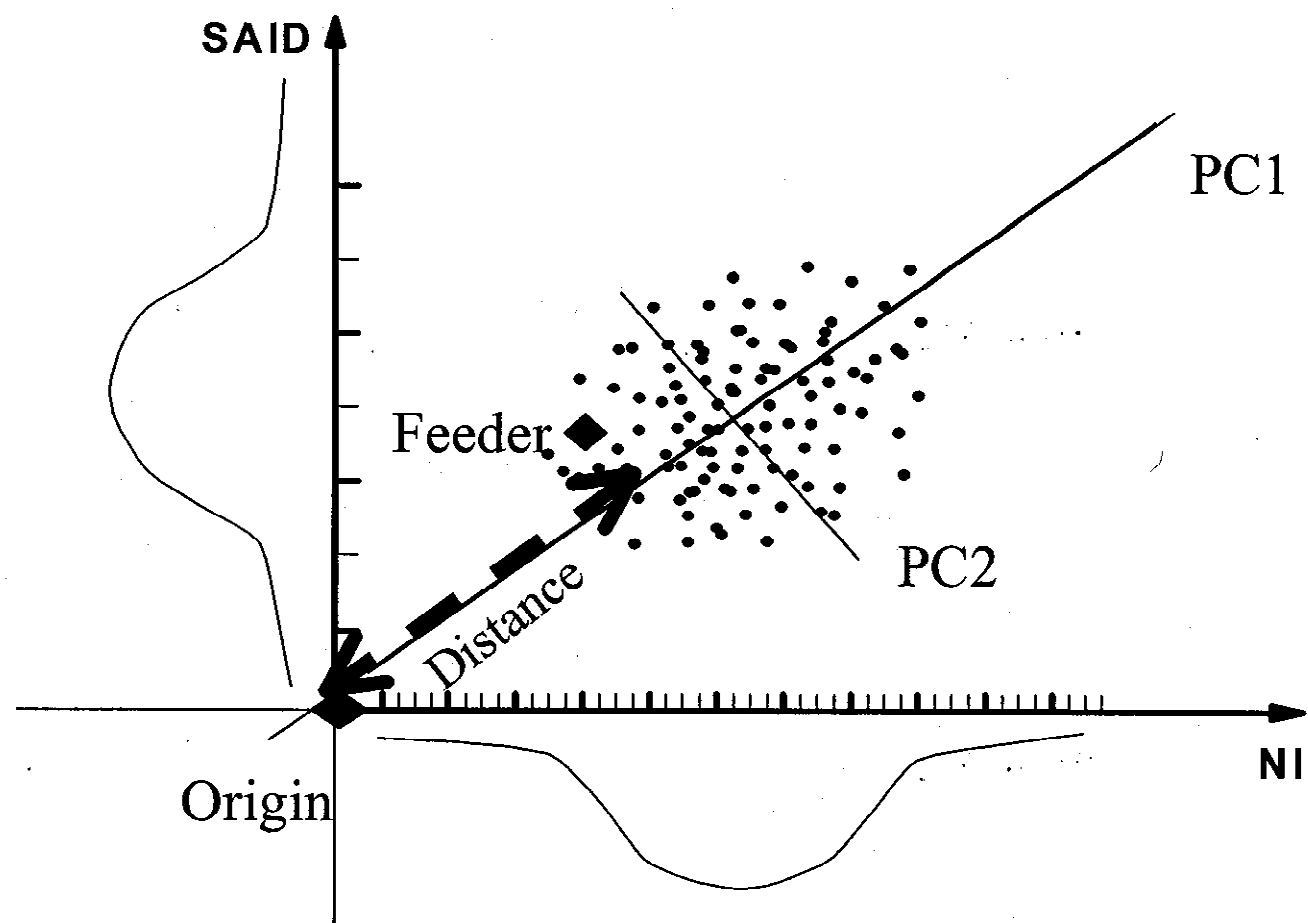


Figure 1 -- Illustration of CPI Concept

## DESCRIPTION OF CALCULATION PROCESS

The following flow chart (*Figure 2*) illustrates the process for calculating the Composite Performance Index for a feeder.

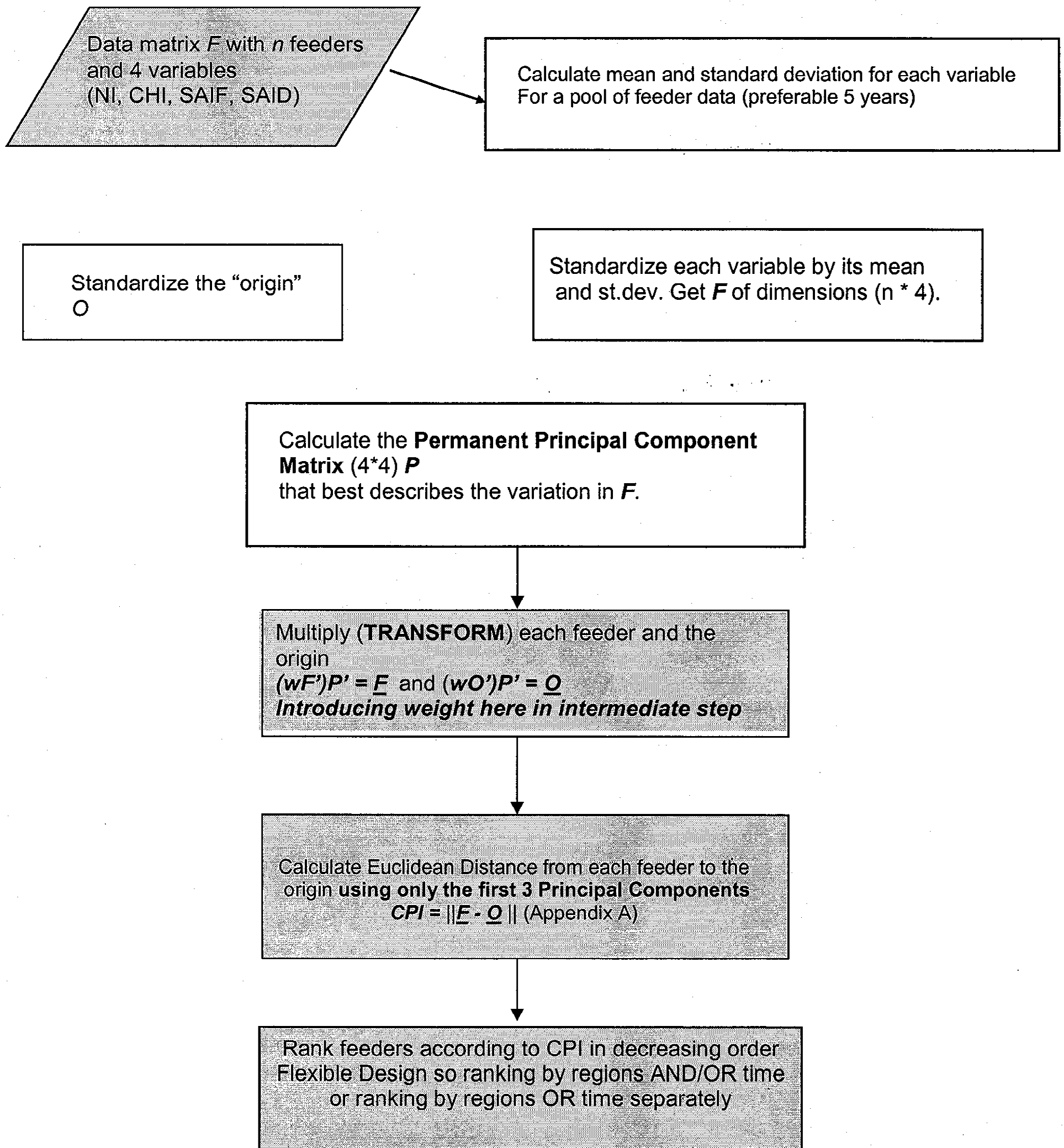


Figure 2 -- Illustration of CPI Concept



## Description of Euclidean Distance to Derive CPI

### I. Definitions:

Principle Component Matrix (each row is Principal Component vector)

$$P = \begin{bmatrix} PC_1 \\ PC_2 \\ PC_3 \\ PC_4 \end{bmatrix} = \begin{bmatrix} pc_{1,NI} & pc_{1,CHI} & pc_{1,SAIF} & pc_{1,SAID} \\ pc_{2,NI} & pc_{2,CHI} & pc_{2,SAIF} & pc_{2,SAID} \\ pc_{3,NI} & pc_{3,CHI} & pc_{3,SAIF} & pc_{3,SAID} \\ pc_{4,NI} & pc_{4,CHI} & pc_{4,SAIF} & pc_{4,SAID} \end{bmatrix}$$

$$originalFeeders = F = \begin{bmatrix} f_{1,NI} & f_{1,CHI} & f_{1,SAIF} & f_{1,SAID} \\ f_{2,NI} & \cdot & \cdot & \cdot \\ \cdot & \cdot & \cdot & \cdot \\ f_{n,NI} & \cdot & \cdot & f_{n,SAID} \end{bmatrix}$$

$$W = \begin{bmatrix} w_{NI} & 0 & 0 & 0 \\ 0 & w_{CHI} & 0 & 0 \\ 0 & 0 & w_{SAIF} & 0 \\ 0 & 0 & 0 & w_{SAID} \end{bmatrix}$$

$$\Sigma = \begin{bmatrix} \sigma_{NI} & 0 & 0 & 0 \\ 0 & \sigma_{CHI} & 0 & 0 \\ 0 & 0 & \sigma_{SAIF} & 0 \\ 0 & 0 & 0 & \sigma_{SAID} \end{bmatrix}$$

### II. Intermediate Calculations

$$M = \Sigma * W = \begin{bmatrix} \frac{w_{NI}}{\sigma_{NI}} & 0 & 0 & 0 \\ 0 & \frac{w_{CHI}}{\sigma_{CHI}} & 0 & 0 \\ 0 & 0 & \frac{w_{SAIF}}{\sigma_{SAIF}} & 0 \\ 0 & 0 & 0 & \frac{w_{SAID}}{\sigma_{SAID}} \end{bmatrix}$$

### III. Transformation

$$\hat{F} = F * M * P'$$

$$\hat{F} = \begin{bmatrix} f_{1a} & f_{1b} & f_{1c} & f_{1d} \\ f_{2a} & \cdot & \cdot & \cdot \\ \cdot & \cdot & \cdot & \cdot \\ f_{na} & \cdot & \cdot & f_{nd} \end{bmatrix}$$

Where

- $F$  is the original feeder data matrix (size  $n*4$ )
- $M$  is the intermediate calculation matrix (size  $4*4$ )
- $P'$  is the (transposed) principal component matrix (size  $4*4$ )

### IV. Finalization of CPI – Euclidean Distance Method

For each feeder  $i$  take the values for the 3 first components of row  $i$  in the last matrix above.

$$CPI_{f_i} = \sqrt{f_{ia}^2 + f_{ib}^2 + f_{ic}^2}$$

(D) Corrective Actions for the 10 poor-performing feeders are listed below:

1. Feeder DE0019 out of Silverside Road Substation – Christiana District

Outage Causes	Corrective Actions	Target Dates
Trees, Weather.	• Patrol and thermal scan to help identify possible problems and then correct deficiencies.	9/30/2010
	• Inspect and tree trim as necessary	9/30/2010
	• Install new switching point on Lakewood Drive.	9/30/2010
	• Replace 65T fuses with trip savers.	9/30/2010

2. Feeder DE0241 out of Hockessin – Christiana District

Outage Causes	Corrective Actions	Target Dates
Equipment Failure, Trees, Weather.	• Patrol and thermal scan to help identify possible problems and then correct deficiencies.	9/30/2010
	• Replace switch with recloser on Valley road.	9/30/2010
	• Install tripsaver in Wellington West.	9/30/2010
	• Inspect and tree trim as necessary.	9/30/2010

3. Feeder DE0160 out of New Castle Substation – Christiana District

Outage Causes	Corrective Actions	Target Dates
Trees, Equipment Failure, Animal.	• Patrol and thermal scan to help identify possible problems and then correct deficiencies.	9/30/2010
	• Install two recloses.	9/30/2010
	• Replace open wire in Garfield Park.	9/30/2010
	• Install squirrel guards and fuses in Swanwyck Estates.	9/30/2010
	• Inspect and tree trim as necessary	9/30/2010

4. Feeder DE0659 out of Little Falls Substation – Christiana District

Outage Causes	Corrective Actions	Target Dates
Trees, Equipment, Weather, Animals	• Patrol and thermal scan to help identify possible problems and then correct deficiencies	9/30/2010
	• Install one recloser	9/30/2010
	• Inspect and trim as needed	9/30/2010

5. Feeder DE0613 out of Hares Corner Substation – Christiana District

Outage Causes	Corrective Actions	Target Dates
Tree, Equipment Failure, Animals.	<ul style="list-style-type: none"> <li>• Patrol and thermal scan to help identify possible problems and then correct deficiencies.</li> <li>• Inspect and tree trim as necessary.</li> </ul>	9/30/2010 9/30/2010

6. Feeder DE0231 out of Monchanin Substation – Christiana District

Outage Causes	Corrective Actions	Target Dates
Tree, Equipment Failures, Animals	<ul style="list-style-type: none"> <li>• Patrol and thermal scan to help identify possible problems and then correct deficiencies.</li> <li>• Inspect and tree trim as necessary.</li> </ul>	9/30/2010 9/30/2010 9/30/2010

7. Feeder DE0750 out of Bear Substation – Christiana District

Outage Causes	Corrective Actions	Target Dates
Animal, Unknown, Weather	<ul style="list-style-type: none"> <li>• Patrol and thermal scan to help identify possible problems and then correct deficiencies.</li> <li>• Inspect and tree trim as necessary.</li> </ul>	9/30/2010 9/30/2010

8. Feeder DE0293 out of Milford X Road Substation – Christiana District

Outage Causes	Corrective Actions	Target Dates
Tree, Animal, Equipment Failure,	<ul style="list-style-type: none"> <li>• Thermal scanning to help identify possible problems and then correct deficiencies.</li> <li>• Inspect and tree trim as necessary.</li> <li>• Convert Wedgewood to 3-phase</li> </ul>	9/30/2010 9/30/2010 9/30/2010

9. Feeder DE0606 out of Harmony Substation – Christiana District

Outage Causes	Corrective Actions	Target Dates
Animal, Weather, Tree	• Patrol and thermal scan to help identify possible problems and then correct deficiencies.	9/30/2010
	• Inspect and tree trim as necessary.	9/30/2010
	• Install recloser on Polly Drummond road.	9/30/2010
	• Improving fusing in Red Mill farms.	9/30/2010

10. Feeder DE2230 out of Harrington Substation – Millsboro District

Outage Causes	Corrective Actions	Target Dates
Equipment Failures, Lightning, Motor Vehicles	• Patrol and thermal scan to help identify possible problems and then correct deficiencies	9/30/2010
	• Replace deteriorated wood poles and equipment, install additional arresters and grounding	9/30/2010
	• Inspect and trim as needed	9/30/2010
	• Install gang operated switch for operation/sectionalization	9/30/2010
	• Install fuses to sectionalize and to minimize customer outages due to motor vehicle accidents	9/30/2010

10.4. *The Performance Report shall include annual information that provides the Commission with the ability to assess the EDC's efforts to maintain reliable electric service to all customers in the state of Delaware. Such reporting shall include the following items:*

10.4.1. *Current year expenditures, labor resource hours, and progress measures for each capital and/or maintenance program designed to support the maintenance of reliable electric service, to include:*

**Response to 10.4.1:**

Progress measures are as follows:

Delmarva Power exceeded the planned scope of vegetation management transmission work, based on acres, by 136%. Delmarva Power did not complete the planned scope of vegetation management work for the distribution segments of the system, pole miles completed (distribution). Delmarva Power completed 83% of planned distribution maintenance work in 2009. All Priority Feeders were completed. All North American Electric Reliability Council (NERC) and PJM

requirements for transmission maintenance were completed. The balance of planned maintenance work deferred during 2009 is included in the 2010 Maintenance Plan.

*10.4.1.1. Transmission vegetation maintenance*

**Response to 10.4.1.1:**

Current year (2009) expenditures:	\$892,832
Current year (2009) labor hours:	462

*10.4.1.2. Transmission maintenance, excluding vegetation, by total, preventive and corrective categories*

**Response to 10.4.1.2:**

Preventive category

Current year (2009) expenditure:	\$875,806
Current year (2009) labor hours:	5,824

Corrective category

Current year (2009) expenditure:	\$766,353
Current year (2009) labor hours:	6,792

Total transmission maintenance (including Preventive and Corrective Categories)

Current year (2009) expenditures:	\$1,671,530
Current year (2009) labor hours:	12,718

*10.4.1.3. Transmission capital infrastructure improvements*

**Response to 10.4.1.3:**

Current year (2009) expenditures:	\$58,000,000
Current year (2009) labor hours:	8,615

*10.4.1.4. Distribution vegetation maintenance*

**Response to 10.4.1.4:**

Current year (2009) expenditures:	\$3,547,884
Current year (2009) labor hours:	2,118

**10.4.1.5. Distribution maintenance, excluding vegetation, by total, preventive and corrective categories**

**Response to 10.4.1.5:**

**Preventive category**

Current year (2009) expenditure:	\$2,192,036
Current year (2009) labor hours:	15,741

**Corrective category**

Current year (2009) expenditure:	\$1,392,220
Current year (2009) labor hours:	10,497

**Total distribution maintenance (including Preventive and Corrective Categories)**

Current year (2009) expenditures:	\$3,609,179
Current year (2009) labor hours:	26,325

**10.4.1.6. Distribution capital infrastructure improvements**

**Response to 10.4.1.6:**

Current year (2009) expenditures:	\$107,000,000
Current year (2009) labor hours:	160,065

Section 7, paragraph 2 and 3 are reproduced here for reference

- 7.0. Inspection and maintenance Program
- 7.2. As a maintenance minimum, each EDC shall inspect and maintain as necessary its power transformers, circuit breakers, substation capacitor banks, automatic 3-phase circuit switches and all 600 amp or larger manually operated, gang transmission circuit tie switches at least once every two (2) years.
- 7.3. As a maintenance minimum, each EDC shall inspect all right-of-way vegetation at least once every four (4) years and trim or maintain as necessary, according priorities to circuits that have had significant numbers of vegetation-related outages, while not unduly delaying the trimming of other circuits that inspections indicate currently need trimming. Vegetation management practices should be applied at least once every four (4) years except where growth or other assessments deem it unnecessary

10.4.1.7. *Transmission and Distribution progress per Section 7, Paragraph 2. and 3*

**Response to 10.4.1.7:**

Inspection and Maintenance

Delmarva Power inspects and maintains the Power Delivery Assets (Transmission, Distribution and Substation) as described in the "2010 Reliability Planning and Studies Report."

For 2009, Delmarva completed all planned equipment maintenance based on the assigned cycles which include:

Transmission

- |   |                                |
|---|--------------------------------|
| - Transmission wood pole inspection             | 12 to 18 year cycle            |
| - Transmission infrared inspection              | Annually                       |
| - Transmission vegetation management            | 4 year maintenance program     |
| - Transmission Aerial inspection                | semi-annually                  |
| - High Pressure Oil or Gas Filled Cable Systems | Annually                       |
| - Communication / Tower Aviation Warning Lights | Annually                       |
| - Visual check of navigable water crossings     | 5 year cycle                   |
| - Transmission aerial inspection, "fly by"      | 3 year cycle                   |
| - Transmission aerial inspection, comprehensive | Bulk supply lines – 6 yr cycle |

Distribution

- |                                  |              |
|----------------------------------|--------------|
| - Street Light Group Replacement | 6 year cycle |
|----------------------------------|--------------|



- |   |                           |
|---|---------------------------|
| - Inspection of Switch Capacitor Banks  | Annually                  |
| - Inspection of Fixed Capacitor Banks   | Annual visual inspection  |
| - Full operational check of Reclosers and Sectionalizers Electronic Controls tested | Every 3-6 yrs             |
|   |                           |
| - Visual inspection electronically controlled reclosers                             | Annually                  |
| - Distribution wood pole inspections  | 12 to 18 year cycle       |
| - Inspection of Pad Mounted Distribution Facilities                                 | 10 to 20 Year cycle       |
| - Distribution Vegetation Management  | Reliability based program |
| - Distribution infrared inspection  | 5 year cycle              |
| - Visual check of navigable water crossings   | 5 year cycle              |

### Substation

See Delmarva's "2010 Reliability Planning and Studies Report," pages 8 – 10, for extensive listing of substation maintenance activities.

### Vegetation

The goal for PHI/Delmarva is to develop safe reliable transmission and distribution services, minimize interruptions caused by trees and other vegetation, while maintaining a harmonious relationship with the environment.

Vegetation Management is approached with a reliability-based philosophy, through a condition-based maintenance (CBM) program which is a process wherein feeder performance data is analyzed and evaluated to identify performance issues related to vegetation. Distribution and sub-transmission feeders are evaluated, prioritized, and selected for corrective action to improve reliability. Regulatory and community concerns are addressed through proper selection and prioritization of feeders.

In parallel with the CBM program is reactive maintenance (RM). This program enhances further and maintains reliability as it relates to vegetation issues. RM addresses unscheduled vegetation conditions that are reported by customers, regulatory bodies, municipalities and utility personnel. This includes storm restoration activities. Upon receiving customer inquiries, Delmarva patrols the feeders and identifies any vegetation issues.

Inspection and maintenance is performed on selected distribution and sub-transmission feeders. Delmarva's vegetation program is feeder-based and is expected to be completed within a four-year timeframe.

Vegetation management activities on transmission lines are in compliance with NERC Standards and are on a four year maintenance program. In addition, all transmission lines are aerially inspected semi-annually to identify potential problems.

10.4.1.8. *Any related process, practice or material improvements*

**Response to 10.4.1.8:**

In 2009, SAP-PM was implemented throughout PHI, including all the service territories throughout Delmarva, for all transmission, vegetation and substation assets. SAP-PM replaced MAXIMO, which was integrated throughout Delmarva at the time of the Conectiv/Pepco merger. SAP-PM has been used as the single Operations and Maintenance (O&M) work management and budgeting tool for all the transmission, vegetation and substation assets throughout Delmarva in 2009 and moving forward. SAP-PM plans, budgets and tracks all O&M work activities from start to finish. Since SAP-PM's implementation, safety, reliability and cost effectiveness has improved throughout the Delmarva service territory. SAP-PM is also currently being implemented for all distribution assets by interfacing it with the GIS/ESRI system used throughout PHI, again which includes all the service territory throughout Delmarva. This implementation is expected to be completed by the end of 2010.

PHI has also enhanced its Equipment Condition Assessment (ECA) Program in 2009. This program analyzes major assets at each PHI Region on a quarterly basis by reviewing critical equipment maintenance and operational information. At the conclusion of each quarter, repair and replacement prioritizations are issued to each Region's maintenance, construction and engineering departments, who follow through with repairing/replacing the equipment according to the published priorities. Priorities are based upon but are not limited to such factors as safety, reliability, cost effectiveness, expansion and even retirement. The ECA Program was implemented throughout 2009 entirely at Delmarva and will continue moving forward.

10.4.2. *Current year OMS data to include:*

The following data is MEDs exclusive.

10.4.2.1. *Number of outages by outage type*

**Response to 10.4.2.1:**

Number of Transmission Interruptions for 2009:	0
Number of Substation Interruptions for 2009:	22
Number of Distribution Interruptions for 2009:	4,764
 Total Number of interruptions (All Types):	 4,786

*10.4.2.2. Number of outages by outage cause*

**Response to 10.4.2.2:**

Number of Interruptions due to Animal contact:	760
Number of Interruptions due to Dig-In:	91
Number of Interruptions due to Equipment Failure:	1,242
Number of Interruptions due to Motor Vehicle Hit:	122
Number of Interruptions due to Others:	222
Number of Interruptions due to Overload:	113
Number of Interruptions due to Tree:	999
Number of Interruptions due to Unknown:	687
Number of Interruptions due to Weather:	550

Total Number of Interruptions (All Causes): 4,786

*10.4.2.3. Total Number of customers at year end*

**Response to 10.4.2.3:**

Total Number of customers at year end (2009): 301,505

*10.4.2.4. Total Number of customers that experienced an outage*

**Response to 10.4.2.4:**

Of the 301,505 customers Delmarva served in Delaware, there were 191,130 customers who experienced at least one outage during 2009.

Total customers affected (counting multiple times if a customer experienced multiple outages during the period) during 2009 were 406,707.

*10.4.2.5. Total customer minutes of outage time:*

**Response to 10.4.2.5:**

Total customer minutes of outage time: 57,333,636

*10.4.3. Current year CELID<sub>8</sub> and CEMI<sub>8</sub> results, exclusive of major events, including any effort being made to reduce the occurrences of multiple outages or long duration outages.*

**Response to 10.4.3:**

CELID<sub>8</sub>: 29,740

Definition of CELID<sub>8</sub> according to section 2.0 is reproduced below for reference:

CELID<sub>8</sub> – Represents the total number of customers that have experienced a cumulative total of more than eight hours of outages.

The 29,740 customers identified under CELID<sub>8</sub> were derived through multiple interruptions that when summed, exceed 8 hours in total for the year. Many of the interruptions were in fact short durations (five plus minutes). A number of these customers are covered by the Priority Feeder Improvement Program which includes infrastructure replacement, animal guard installation and tree trimming.

CEMI<sub>8</sub>: 0.000607 (or 0.06%)

The 0.06% (or 183) customers identified under CEMI<sub>8</sub> in 2009, although more than what was reported during 2008 (0.03%), it remains significantly lower than the 0.88% reported in 2006, or 0.35% reported in 2007.

The 2009 CEMI<sub>8</sub> circuits and their reliability improvements are as follows:

DE2208 – Due to the data collection period for 2009 CEMI<sub>8</sub> (October 1, 2007 to September 30, 2008), the failed equipment that caused this feeder to be a CEMI<sub>8</sub> feeder was corrected in Winter 2007/2008. The work included the replacement of exit feeder in early 2008; replacement of overloaded transformers and trimming; performed thermo scan and corrected deficiencies during 2008. In 2009, overhead fault indicators were installed throughout the feeder. No additional improvement work was completed.

*10.4.4. Current year customer satisfaction or other measures the EDC believes are indicative of reliability performance.*

**Response to 10.4.4:**

Customer satisfaction is measured in a variety of ways at Delmarva. A combination of perception surveys and transactional surveys is used. Each year, Delmarva conducts an extensive customer satisfaction survey and asks a number of questions pertaining to reliability performance. The Company utilizes a third-party Market Research Firm, Market Strategies International (MSI), to perform the work. For 2009, Delmarva's overall customer satisfaction score was 69% satisfied and the satisfaction level with "providing reliable service" was 84% satisfied.

*10.5. The Performance Report shall include a summary of each major event for which data was excluded, and an assessment of the measurable impact on reported performance measures.*

**Response to 10.5:**

Definition of Major Event according to section 2.0 of the Electric Service Reliability and Quality Standards is reproduced below for reference:

Major Event: Means an event consistent with I.E.E.E. 1366, Guide for Electric Power Distribution Reliability Indices Standard as approved and as may be revised. For purposes of this regulation, changes shall be considered to be in effect beginning January 1 of the first calendar year after the changed standard is

adopted by the I.E.E.E. Major event interruptions shall be excluded from the EDC's SAIDI, SAIFI, CAIDI and Constrained Hours measurements for comparison to reliability benchmarks. Interruption data for major events shall be collected, and reported according to the reporting requirements outlined in Section 11.

#### Assessment of the measurable impact on 2008 Major Events

There were 3 days in 2009 that Delmarva's Delaware Service Territory exceeded the MED threshold based on I.E.E.E. STD 1366-2003. Dates and the impacts are listed below:

Delmarva's Delaware Service Territory 2009 MED Threshold according to I.E.E.E. STD 1366-2003: 13.88 minutes

Date	Event	Daily SAIDI
06/2/09	Wind and Lightning	24 Minutes
08/2/09	Lightning	21 Minutes
08/9/09	Lightning	21 Minutes

Total "Excludable" for the above 3 MEDs resulted in 56,677 customers affected and 19,850,587 customer minutes of interruption. It translated to SAIFI of 0.19 and SAIDI of 66 minutes.

In addition, there were no Major Event Reports required for 2009.

10.6. *In the event that an EDC's reliability performance measure does not meet an acceptable reliability level for the calendar year, the Performance Report shall include the following:*

10.6.1. *For not meeting SAIDI, an analysis of the customer service interruption causes for all delivery facilities by dispatch, response and repair times that significantly contributed to not meeting the benchmark.*

#### **Response to 10.6.1:**

No action required.

The SAIDI for Delmarva's Delaware service territory is measured at 190 minutes for 2009. The Benchmark, as established in section 4.3.1.2 of the Electric Service Reliability and Quality Standards, is 295 minutes.

10.6.2. *For not meeting Constrained Hours of Operation, an analysis of significantly constraints by cause.*

#### **Response to 10.6.2:**

No action required.

The Constraint Hours of Operation of Delmarva's service territory is measured at 87 hours for 2009. This is lower than the established Benchmark standard of 600 hours, as established in section 4.3.2 of the Electric Service Reliability and Quality Standards.

*10.6.3. A Description of any corrective actions that are planned by the EDC and the target dates by which the corrective action shall be completed.*

**Response to 10.6.3:**

No action required (see responses to 10.6.1 and 10.6.2).

*10.6.4. If no corrective actions are planned, an explanation shall be provided.*

**Response to 10.6.4:**

Delmarva's performances as stated in 10.6.1 and 10.6.2 are lower than the benchmark. No action required.

*10.7. The Performance Report shall include copies of current procedures identifying methods the EDC uses to ensure the electric supplier delivery of energy to the EDC at locations and in amounts which are adequate to meet each electric supplier's obligation to its customers.*

**Response to 10.7:**

Delmarva currently provides electric supply service to Delaware customers through terms and conditions embodied in a settlement agreement approved by the Delaware Public Service Commission (Commission) in Docket No. 04-391. The settlement took effect when fixed price offers expired on April 30, 2006 and requires that Delmarva procure Standard Offer Service (SOS) supply to its customers through the competitive selection of wholesale supply. The settlement agreement also provided a description of the procedures and methods to be used for the procurement of supply. Such description, referred to as the Bid Plan, consisted of the Full Requirements Service Agreement ("FSA") and the Request For Proposals ("RFP"). In December 2009, a wind facility installed under a long-term contract with Delmarva achieved commercial operation. The facility will supply wind energy and Renewable Energy Credits ("RECs") in amounts necessary to meet Delmarva's Delaware obligations under the Renewable Energy Portfolio Standards Act. On September 18, 2009, Delmarva filed with the Commission consensus changes to the process by which it procures electricity for SOS customers. On October 6, 2009, the Commission issued Order No. 7670 approving the changes and adopted a revised RFP and FSA. Among the changes, Order 7670 provides that Delmarva conduct wholesale market settlements with SOS suppliers on a weekly basis in accordance with PJM schedules.

- The RFP is for full requirements wholesale supply service, excluding RECs, to meet the needs of Delmarva's SOS retail load obligations in Delaware. The wholesale bidding process seeks to solicit proposals from bidders interested in providing Fixed Price SOS ("FP-SOS") by customer Service Types and contract terms of various lengths. Winning bidders are selected and contracts awarded based on the lowest price offered. (See Attachment No. 1 for the current RFP).
- The FSA contains the parties' rights and obligations for providing and receiving full requirements wholesale electric supply, including those rights and obligations associated with credit and performance assurances. No provision within the FSA is negotiable and a master FSA is executed with each supplier for all winning transactions resulting from the RFP. (See Attachment No. 2 for the current FSA).

10.8. *The Performance Report shall include certification by an officer of the EDC of the data and analysis and that necessary projects, maintenance programs and other actions are being performed and adequately funded by the Company as addressed in its annual plans.*

**Response to 10.8:**

See page 2 for Certification.

10.9. *Unless a generation company participates in the Generation Working Group, each generation company shall submit by April 30 of each year an annual Reliability Performance Report. The performance report shall include the individual unit and average station forced outage rates and any anticipated changes that may impact the future adequacy of supply. Each generation company shall also provide the Commission with at least a one-year advanced notification of any planned unit retirements, planned re-powering or planned long-term unit de-ratings.*

**Response to 10.9:**

No Response Required – Delmarva is not a generation company.

10.9.1. *The performance report required by Section 10.9 shall include the individual unit and average station forced outages rates and any anticipated changes that may impact the future adequacy of supply.*

**Response to 10.9.1:**

No Response Required – Delmarva is not a generation company.

10.9.2. *Each generation company not a member of a Generation Working Group shall also provide the Commission with at least a one-year advanced notification of*

*any planned unit retirements, planned re-powering or planned long-term unit de-ratings.*

**Response to 10.9.2:**

No Response Required – Delmarva is not a generation company.

- 10.10. *In lieu of submission of an annual Reliability Performance and one-year advanced notification, as required in Section 10.9, Generation companies may voluntarily participate in a Generation Working Group.*

**Response to 10.10:**

No Response Required – Delmarva is not a generation company.

- 10.10.1. *The Commission shall designate one member of the Commission Staff to chair the working Group. Such individual shall refer to as the "Commission Staff Member."*

**Response to 10.10.1:**

No Response Required – Delmarva is not a generation company.

- 10.10.2. *Meeting of the Generator Working Group shall be no less frequently than semiannually shall be scheduled by the Commission Staff Member.*

**Response to 10.10.2:**

No Response Required – Delmarva is not a generation company.

- 10.10.3. *The purpose of the semi-annual meetings will be for the Commission Staff Member and the participating Generation company or companies, as the case may be, to agree upon the specific parameters of generation information to be provided by member Generation companies to the Commission and how and when such information should be presented to the Commission. The specific parameters and presentation of information need not be identical for Generation Company, as agreed by the Generator Working Group.*

**Response to 10.10.3:**

No Response Required – Delmarva is not a generation company.

- 10.10.4. *In the event of a disagreement between the Commission Staff Member and a Generation company, the Generator Working Group will attempt to resolve the disagreement by consensus. If consensus cannot be achieved in a reasonable time, the Generator Working Group of any member may request a determination by the Commission of the issue.*

**Response to 10.10.4:**



No Response Required – Delmarva is not a generation company.

*10.10.5 To allow Generation companies to participate openly without disclosing commercially-sensitive information to each other, the semi-annual Working Group meetings must be supplemented with meetings between the Commission Staff Member and individual Generation companies. Such individual meetings may be requested, on an as needed basis, by the Commission Staff Member or by a Generation company.*

**Response to 10.10.5:**

No Response Required – Delmarva is not a generation company.

*10.10.6 The Generation company or companies, as the case may be, shall use its or their best efforts to provide the requested information within an agree-upon period of time.*

**Response to 10.10.6:**

No Response Required – Delmarva is not a generation company.

*10.10.7 The Commission and each member of the Generator Working Group shall implement all steps necessary to protect the confidentiality of commercially sensitive information provided by the Generation company or companies, as the case may be.*

**Response to 10.10.7:**

No Response Required – Delmarva is not a generation company.

*10.10.8. Each of the Generator Working Group reserves the right to not provide information of a commercially-sensitive nature to all or some of the members of the Generator Working Group unless and until it obtains legally sufficient protection against non-disclosure of such information, and each such member shall take reasonable steps to procure such legally sufficient protection, to the extent these Rules do not constitute such protection.*

**Response to 10.10.8:**

No Response Required – Delmarva is not a generation company.

*10.10.9 Any Generation company participating in the Generator Working Group may withdraw at any time.*

**Response to 10.10.9:**

No Response Required – Delmarva is not a generation company.

## **ATTACHMENT 1**

**DELMARVA POWER & LIGHT COMPANY  
2010  
REQUEST FOR PROPOSALS  
FOR  
FULL REQUIREMENTS WHOLESALE ELECTRIC  
POWER SUPPLY  
IN  
DELAWARE**

**Dated  
October 7, 2009**

**Request for Proposals  
For  
Full Requirements Wholesale Electric Power Supply  
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# Request for Proposals For Full Requirements Wholesale Electric Power Supply

## 1. Introduction

Delmarva Power & Light Company (Delmarva) provided electric supply service to Delaware customers through fixed price power supply tariffs offered by Delmarva pursuant to settlements filed with the Delaware Public Service Commission ("Commission") as part of electric restructuring (Docket No. 99-163) and the merger involving Delmarva and Potomac Electric Power Company (Docket No. 01-194). These offers and Delmarva's obligation to provide Standard Offer Service ("SOS") expired as of April 30, 2006. In October 2004, the Commission established Docket No. 04-391 to investigate and determine: (a) which entity will act as the SOS supplier in the Delmarva service territory as of May 2006; and (b) what prices will be charged for SOS in the Delmarva service territory as of May 2006. On March 22, 2005 the Commission issued Order No. 6598 addressing certain major policy issues including determining that the SOS shall be provided by Delmarva using a wholesale model (Phase 1). On July 18, 2005, a Phase 2 settlement was presented to the Commission proposing the terms and conditions for provision of electric service at the end of the current fixed price offers. Also included in the settlement was a brief description of the Bid Plan procedures and the Request For Proposal (RFP) process. On September 16, 2005 a detailed Bid Plan which consisted of the Full Requirements Service Agreement ("FSA") and the RFP was filed with the Commission. On October 11, 2005 in Order No. 6746, the Delaware Public Service Commission approved the settlement agreement by which Delmarva will procure SOS to customers through the competitive selection of wholesale supply. The Bid Plan was approved on October 11, 2005 in Order No. 6746 and the first wholesale competitive bid process was completed in February 2006.

On April 6, 2006, the Delaware Legislature enacted the "Electric Utility Retail Customer Supply Act of 2006". On June 20, 2006 the Commission issued Order No. 6943 initiating a process to revisit the RFP procedures to explore and determine what changes, if any, should be made to the RFP procurement process previously accepted by the Commission in Order No. 6746. On October 3, 2006 the Commission approved consensus recommendations for improving the process and adopted certain additional recommendations related to contested issues. On September 18, 2007, the Commission issued Order No. 7284 approving consensus recommendations and the revised RFP and FSA for the 2008 process to be in place by October 1, 2007.

In mid-year 2008, Delmarva executed four long-term contracts for wind energy and Renewable Energy Credits ("RECs") in amounts to meet its Delaware obligations under the Renewable Energy Portfolio Standards Act. On July 29, 2008, Delmarva filed an application with the Commission to modify the process by which it procures electricity for SOS customers by removing the requirement that wholesale electricity suppliers provide RECs to Delmarva. On August 19, 2008, the Commission approved the application in Order No. 7432. On October 7, 2008, the Commission issued Order No. 7461, which provides that SOS supply be procured

using the World Energy reserve auction process for contracts effective June 1, 2009 and beyond. On October 6, 2009, the Commission issued Order No. 7670 in Docket No 04-391 modifying the RFP and FSA for the 2010 process to be in place by October 7, 2009.

This RFP reflects the improved wholesale bidding process set forth in Docket No.04-391 to solicit proposals from suppliers interested in providing Fixed Price SOS ("FP-SOS") to Delmarva for the customer Service Types and terms indicated in Section 2.2 (Product Definition). The RFP is for full requirements wholesale supply service to meet the needs of Delmarva's SOS retail load obligations in Delaware as described in the settlement and further described in the RFP. Fixed Price SOS bids will only be accepted through the World Energy web-based auction platform.

## **2. Services Requested**

### **2.1. Supply Requirement Overview**

Delmarva is requesting full requirements wholesale supply service generally including energy, capacity, ancillary services and losses, but excluding renewable energy obligations and network integration transmission service. A supplier of full requirements service will have an obligation stated as a specific percentage of Delmarva retail load for specific Service Types, and as such, full requirements service encompasses any changes in customers' demand for any reason.

In order to mitigate wholesale suppliers' exposure to the volumetric risk associated with the Medium General Service-Secondary FP-SOS, Large General Service-Secondary FP-SOS and General Service-Primary FP-SOS Service Types an increment load pricing mechanism, as described in the FSA, has been included in this solicitation. Generally, upon a date certain associated with each awarded bid block, Delmarva will determine the specific amount of capacity peak load contribution (PLC) in megawatts (MW) represented by each awarded bid block (base load). As set forth in Section 2.3 (Multi-Tranche process), each bid block equates to a specific and fixed percentage of the load, and at the time of this RFP, such percentage equates to about 50 MW. However, over time as Delmarva load changes, the MW equivalency of such fixed percentage shall change accordingly. The supplier will be paid its awarded bid price for such base load plus any additional load up to 5 MW per awarded bid block. For load exceeding the base load plus 5 MW per awarded bid block, that "incremental" load will become the responsibility of Delmarva. If load declines below the base load in an amount that equals 3 MW per awarded bid block, a new base load is established at the former base load less 3 MW per awarded bid block.

The specific definition of full requirements service and associated responsibilities are stated in the FSA, which is included as part of this RFP document as Appendix 7. The PLC associated with the customer classes for which Delmarva is soliciting wholesale supply in this RFP is stated in the following table using data as of July 29, 2009. Two representations of PLC are provided. The first represents that portion of the PLC associated with customers, currently receiving SOS from Delmarva, for whom wholesale supply will be solicited in the RFP. The second represents an equivalent proportion of the PLC associated with customers currently

eligible for a specific Service Type within Delmarva service territory. These PLCs will be updated to a date closer to when the RFP is issued.

<u>Service Type</u>	<u>Capacity PLC Megawatts as of July 29, 2009</u>	
	<u>SOS</u>	<u>Eligible</u>
Residential and Small Commercial & Industrial FP-SOS	297.7	307.9
Medium General Service-Secondary FP-SOS	183.7	283.0
Large General Service-Secondary FP-SOS	22.2	109.8
General Service-Primary FP-SOS	29.0	437.7
Total	<b>532.6</b>	<b>1138.4</b>

Pursuant to the Docket No. 04-391 Phase 2 settlement agreement, the composition of Delmarva's portfolio of contracts will target the following load percentages for each contract term for the various Service Types. The specific contracts for which Delmarva is soliciting in this RFP are indicated in Section 2.2 (Product Definition).

## 2.2. Product Definition

In this RFP, Delmarva is soliciting full requirements wholesale service for the terms indicated below.

<u>Term Description</u>	
Residential and Small Commercial & Industrial (RSCI) FP-SOS:	36-Month Term, June 1, 2010 - May 31, 2013
Medium General Service - Secondary (MGS) FP-SOS:	12-Month Term, June 1, 2010 - May 31, 2011
Large General Service - Secondary (LGS) FP-SOS:	12-Month Term, June 1, 2010 - May 31, 2011
General Service - Primary (GS-P) FP-SOS:	12-Month Term, June 1, 2010 - May 31, 2011

## 2.3. Multi-Tranche Process

The selection of proposals by Delmarva in this solicitation will be conducted through a multi-tranche process following the contract term portfolio criteria stated in Section 2.1 (Supply



Requirement Overview). As specified in Section 6 (Schedule for RFP Process), this process will allow for up to three tranches to fulfill Delmarva's requests for its various Service Types. The process is designed, however, such that Delmarva requests are fully met in no more than two tranches, as set forth below. Any remaining tranche(s) will be reserved for use only if Delmarva requests go unfulfilled in the prior tranche(s). If multi-year contracts are applicable, the load associated with each tranche will be further divided among the contract terms. The load within each tranche and for each contract term is further divided into bid blocks. Each bid block represents a certain and specific percentage of the associated load, as of the date indicated in the header of the capacity PLC table in Section 2.1 (Supply Requirement Overview). The bid block design for this solicitation is as follows.

		<u>Contract Term</u>	
		<u>12-Month</u>	<u>36-Month</u>
			<u>Total</u>
<b>Residential and Small Commercial</b>			
<b>&amp; Industrial FP-SOS</b>		<b>33.3333%</b>	<b>33.3%</b>
Approximate Total PLC, MW		297.7	893.2
Block Size, %		5.5556%	
Approximate Block Size, MW		49.6	
Total # of Blocks		6	6
Tranche 1 Blocks		3	3
Tranche 2 Blocks		3	3
<b>Medium General Service-Secondary</b>			
<b>FP-SOS</b>		<b>100.0%</b>	<b>100%</b>
Approximate Total PLC, MW		183.7	183.7
Block Size, %		25.0%	
Approximate Block Size, MW		45.9	
Total # of Blocks		4	4
Tranche 1 Blocks		2	2
Tranche 2 Blocks		2	2
<b>Large General Service-Secondary</b>			
<b>FP-SOS</b>		<b>100.0%</b>	<b>100%</b>
Approximate Total PLC, MW		22.2	22.2
Block Size, %		100.0%	
Approximate Block Size, MW		22.2	
Total # of Blocks		1	1
Tranche 1 Blocks		1	1

**General Service-Primary**

<b>FP-SOS</b>	100.0%	100%
Approximate Total PLC, MW	29.0	29.0
Block Size, %	100.0%	
Approximate Block Size, MW	29.0	
Total # of Blocks	1	1
Tranche 1 Blocks	1	1

*Unfilled Tranche Targets:*

The number of blocks in each tranche for each contract term is a Delmarva target. If the amount of conforming bids in any tranche is unable to meet that tranche's targets, then the unfilled portion of that tranche will be included in the next tranche, and the targets in the next tranche will be revised accordingly. If in the last tranche in which bids are being solicited, as set forth above for any Service Type, any multi-year contract targets are not met, then conforming surplus single-year bids will fill the deficiencies. If in the last tranche there are not sufficient conforming surplus single-year bids to fill a multi-year contract target deficiency, or if the single-year contract target has not been met, then the remaining reserve tranche(s) will be conducted to solicit for any deficiencies.

**2.4. Reverse Auction**

Within each tranche and for each FP-SOS bid block offered by Service Type, there is a single auction conducted on the World Energy web-based auction platform. The energy price offers shall be in terms of \$/MWh. Each auction will open and close as shown below and will be conducted in accordance with the following schedule:

**Tranche 1- November 30, 2009**

Service Type/Offer	Auction No.	Open	Close	Input Price Offer
RSCI /1 block	1	10:00 AM	10:30 AM	\$/MWhr
RSCI /1 block	2	10:00 AM	10:45 AM	\$/MWhr
RSCI /1 block	3	10:00 AM	11:00 AM	\$/MWhr
MGS /1 block	4	10:00 AM	11:15 AM	\$/MWhr
MGS /1 block	5	10:00 AM	11:30 AM	\$/MWhr
LGS /1 block	6	10:00 AM	11:45 AM	\$/MWhr
GS-P /1 block	7	10:00 AM	12:00 PM	\$/MWhr

**Tranche 2- January 25, 2010**

Service Type/Offer	Auction No.	Open	Close	Input Price Offer
RSCI /1 block	1	10:00 AM	10:30 AM	\$/MWhr

RSCI /1 block	2	10:00 AM	10:45 AM	\$/MWhr
RSCI /1 block	3	10:00 AM	11:00 AM	\$/MWhr
MGS /1 block	4	10:00 AM	11:15 AM	\$/MWhr
MGS /1 block	5	10:00 AM	11:30 AM	\$/MWhr

Bids will only be accepted through the World Energy web-based auction platform to be held on November 30, 2009 and January 25, 2010 in accordance with the schedule specified in Section 6 (Schedule for RFP Process) starting at 10:00 AM EPT. The bid block auctions will be held at <http://www.wesplatform.com>, which is the auction website.

During each auction, bidders will be able to see all the bids they have posted and the current low bid. All bids shall be anonymous.

In order to access and use the auction website, eligible bidders will be contacted by World Energy Solutions, Inc., the proprietor of the auction website, and will be required to sign a Supplier Agreement with World Energy Solutions before being issued a password to access the auction website. Appendix 6 contains the World Energy Solutions Supplier Agreement. In addition, all eligible bidders must agree to pay a required fee to World Energy Solutions, for any auction awards made by Delmarva to the bidders as a result of this RFP. All bids submitted must be inclusive of this fee. Bidders who fail to satisfy all the Pre-Bid requirements in Section 3 in a timely manner will be denied access to the auction website and such bidders will not be able to participate in the Auction.

All costs and expenses associated with developing and/or submitting a bid in response to this RFP and/or any related activity following the submission of any such bid shall be borne by the bidder.

Questions regarding the auction process should be directed to Elisabeth Charnley of World Energy by email to [echarnley@worldenergy.com](mailto:echarnley@worldenergy.com) or telephone at 1-800-578-0718 no later than 5:00 pm EPT on Friday November 27, 2009. All questions and their answers shall be posted on the Delmarva DE RFP Website.

Interested bidders are invited to call into a pre-bid teleconference on the auction process to be held in mid Oct, 2008. The call in number is 1-866 779 0773 and the meeting number is \*2771999\*. Please remember to enter the \* sign before and after the meeting number. Participants will be able to ask questions only during the open floor portion of the call. For purposes of this teleconference, it is not required that individual or company names be identified when questions are asked. The teleconference will include a demonstration of the auction platform. Internet access will be required for this demonstration.

## **2.5. Supplier Step-Up Provision**

As set forth in the FSA, in the event of an early termination of a FSA, all other wholesaler suppliers serving Delmarva FP-SOS load, pursuant to the Delaware Public Service Commission Orders and approved settlement in Docket No. 04-391, will have the option to take

a full or partial pro-rata share of the load for the balance of the terminated FSA term, under the same pricing, terms and conditions of the terminated FSA. Such option to take a pro-rata share of the load will include a transfer to the step-up supplier of any rights associated with congestion management. The supplier to which the option is offered shall meet any additional collateral requirements related to the step-up of its obligation. If any supplier does not exercise its option to increase its obligation, the other suppliers will have the option to take a pro-rata share of the amount of the increased obligation that such supplier declined to take. A supplier's pro-rata share will be the ratio of the supplier's load obligation, stated on a capacity PLC basis, to the total load being served under FSAs pursuant to the Delaware Public Service Commission Orders and approved settlement in Docket No. 04-391, excluding the terminated FSA and, if applicable, FSAs under which suppliers decline to exercise their step-up option in part or full.

## **2.6. Customer Restrictions**

The FP-SOS procurement set forth in this RFP is to meet the supply needs for those customers that "choose not to choose" to take supply from a competitive retail supplier; are unable to obtain supply from competitive retail suppliers; or have been served by a competitive retail supplier, but, for any reason returns to FP-SOS. All customers other than General Service-Transmission are eligible for FP-SOS. Customers within the General Service-Transmission classification will be eligible for an hourly priced standard offer service (HPS) provided by Delmarva. HPS will also be available to the General Service-Primary classification subject to the restrictions described below.

### *Residential and Small Commercial & Industrial FP-SOS:*

Pursuant to the Docket No. 04-391 Phase 2 settlement agreement, subject to Delmarva customer enrollment rules and tariffs, customers may leave and return to FP-SOS at any time without switching restrictions.

### *Medium General Service-Secondary; Large General Service-Secondary; General Service-Primary FP-SOS:*

Pursuant to the Docket No. 04-391 Phase 2 settlement agreement, subject to Delmarva customer enrollment rules and tariffs, customers may leave and return to FP-SOS at any time without switching restrictions. For the General Service-Primary customers an additional option is available to take HPS if an affirmative election is made and certain metering requirements are met prior to when bids for FP-SOS are due.

## **3. Eligibility of Applicants**

### **3.1. Overview of Eligibility**

The purpose of the eligibility process is to provide information to the applicants regarding their eligibility to bid. An applicant is eligible to bid if, in a timely and complete fashion, it submits an Expression of Interest Form, executes the Confidentiality Agreement, certifies that it meets the PJM membership and FERC authorization requirements stated in Section 3.4 (Submittal of Applicant's PJM and FERC Qualifications), its, or its guarantor's, unsecured senior long-term debt is currently rated by Standard & Poor's Ratings Group, Fitch

Investor Services or Moody's Investor Services, and submits the Credit Application and associated financial information requested in Section 3.5 (Submittal of Credit Application and Financial Information)..

### **3.2. Submittal of Expression of Interest**

Applicants interested in participating in this RFP are required to express their non-binding interest to bid by completing and submitting the Expression of Interest Form (Appendix 1). An electronic copy of the Expression of Interest Form will be made available to applicants for completion on the Delmarva DE RFP website. The applicant will not be eligible to submit proposals until such submission has been provided to Delmarva. Upon submission of the Expression of Interest Form, an applicant will be issued a password to access a website containing additional information related to this RFP.

### **3.3. Confidentiality Agreement**

An applicant and Delmarva will be required to execute the Confidentiality Agreement (Appendix 2) electronically and as a signed hard copy. An electronic copy of the Confidentiality Agreement can be found on the Delmarva DE RFP website. The applicant will not be eligible to submit proposals until such agreement has been executed. The applicant should send the signed executed agreement by mail or courier service to:

DELMARVA DE RFP Coordinator

701 Ninth Street, N.W., Suite 6413

Washington D.C. 20068

Once the agreement is received from the applicant, Delmarva will complete the execution of the agreement and send a copy of the fully executed agreement to the applicant by mail or courier service.

### **3.4. Submittal of Applicant's PJM and FERC Qualifications**

An applicant must certify that it is a member of the PJM Interconnection, LLC (PJM) and qualified as a market buyer and market seller in good standing able to secure generation or otherwise obtain and deliver electricity in PJM through compliance with all applicable requirements of PJM to fulfill a full requirements obligation. In addition, an applicant must certify that it has been authorized by the Federal Energy Regulatory Commission (FERC) to make sales of energy, capacity and ancillary services at market based rates. The PJM Qualification Certification Form (Appendix 3) and the FERC Authorization Certification Form (Appendix 4) can be found on the Delmarva DE RFP website. Such certifications must be signed by a signatory with the authority to act on behalf of the applicant. Applicants are required to submit such certifications no later than the due date noted in Section 6 (Schedule for RFP Process). The applicant will not be eligible to submit bids until such certifications have been provided to Delmarva. In the event the applicant has previously submitted such documents for qualification to participate in a neighboring PHI SOS jurisdiction for the same RFP year, such documents can be referenced to meet this requirement. If, however, the applicant's good-standing membership with PJM or its FERC authorization has been adversely affected since

submittal of the original documents, it is the responsibility of the applicant to immediately notify Delmarva of such events. Once notified, Delmarva will make any appropriate adjustments to the applicant's eligibility status.

### **3.5. Submittal of Credit Application and Financial Information**

Applicants are required to submit the Credit Application (Appendix 5) and associated financial information to Delmarva no later than the Application and Financial Information due date noted in Section 6 (Schedule for RFP Process). An electronic copy of the Credit Application can be found on the Delmarva DE RFP website. The applicant should send the complete application and the associated financial information electronically. In the event the applicant has previously submitted such credit application and financial information for qualification to participate in a neighboring PHI SOS jurisdiction for the same RFP year, such documents can be referenced to meet this requirement. If, however, the applicant's credit rating has downgraded since submittal of the original documents, it is the responsibility of the applicant to immediately notify Delmarva of such event. Once notified, Delmarva will make any appropriate adjustments to the applicant's eligibility status.

All submitted information must be in the English language, and financial data denominated in United States currency, and conform to generally accepted accounting principles (GAAP) in the United States. If the applicant's financial information is consolidated with other entities, then it is the applicant's responsibility to extract and submit as separate documents all data and information related solely to the applicant. This must include all financial information, associated notes and all other information that would comprise a full financial report conforming to GAAP. If the applicant's, or its Guarantor's, financial data does not meet the above criteria, the following information is required in order to determine eligibility:

- a. Most recent audited annual financial information (including a balance sheet, income statement, and cash flow statement).
- b. Most recent quarterly or mid-year audited financial information; if audited quarterly or mid-year financial information is not available, please provide most recent quarterly or mid-year financial information accompanied by an attestation by the applicant's, or its Guarantor's Chief Financial Officer (or other approved authority) that the information submitted is true, correct and a fair representation of the applicant's or Guarantor's financial condition.
- c. Credit Rating information (including rating, rating agency and date of rating).
- d. A legal opinion acceptable to Delmarva of counsel qualified to practice in the foreign jurisdiction in which the Guarantor, if applicable, is incorporated or otherwise formed that the Guaranty is, or upon the completion of execution formalities will become, the binding obligation of the Guarantor in the jurisdiction in which it has been incorporated or otherwise formed.
- e. Any additional information the applicant or its Guarantor wish to give that could provide comparable credit assurances to those that are provided by other applicants or Guarantors whose financial data is denominated in the United States currency, and conform to generally accepted accounting principles (GAAP) in the United States.

Applicants are urged to provide the materials necessary to establish eligibility as soon as practicable. Delmarva will endeavor, on a best efforts basis, to notify applicants of any

deficiencies in their submittals by the earlier of two weeks from the time the applicant submits its material to Delmarva or the date by which Delmarva must issue applicant's eligibility status as indicated in Section 6 (Schedule for RFP Process). However, Delmarva does not bear any responsibility for failure to notify applicants of deficiencies prior to the date indicated in Section 6 (Schedule for RFP Process) for the issuance of the applicants' eligibility status. Early submittal of materials will provide the greatest flexibility to correct deficiencies prior to the deadline. Delmarva will notify applicants as soon as Delmarva has determined that they have met the eligibility requirements. In the event the applicant's information is not submitted by the due date or submitted in an incomplete fashion, the applicant will be eliminated from further consideration in the first tranche of this RFP. Therefore, it is in the applicant's best interest to submit its credit and financial information early in the process, allowing some time to cure incomplete information before the due date.

### **3.6. Cure Time for Deficiencies in Qualification Requirements**

In the event that an applicant has not met all of the qualification requirements under Section 3 (Eligibility of Applicants) so as to not be eligible to submit proposals in the first tranche, such applicant will be allowed to cure any such deficiency and participate in subsequent tranches, if the deficiency is cured no later than two weeks prior to the due date of proposals for the next tranche.

### **3.7. Alternative Forms of Performance Assurance**

Subsequent to the awarding of a contract to a supplier, an instrument of performance assurance to secure Delmarva's exposure during the term of the FSA may be required, as set forth in the FSA. Any performance assurance required of the supplier determined in accordance with the FSA may be in the form of cash, LOC, or other security acceptable to Delmarva. An acceptable Performance Assurance LOC form is provided as Exhibit C in the FSA. If an applicant prefers to use an alternative LOC form for the performance assurance, the applicant must provide such alternative form along with its Credit Application and financial information. If an applicant intends to use security other than cash or LOC, Delmarva requests that the applicant describe such other security at the time it submits its Credit Application and financial information. The acceptability of such alternative LOC form or such other form of security will be at the sole discretion of Delmarva, and such acceptability will be communicated to the applicant no later than the time indicated in Section 6 (Schedule for RFP Process) for the issuance of the applicants' eligibility status.

## **4. Proposals**

### **4.1. Bid Format**

Price Quotes for Bid Block Offered - Auctions will be held by tranche, service type, and bid block, for a total of twelve separate full-requirements wholesale electric supply products. The price offers for each auction shall be for Summer Energy and Non-Summer Energy. The energy price offers shall be in terms of \$/MWh. All MWh energy shall be at the customer premise or retail meter-level. As set forth in the FSA, the MWh of energy shall be equivalent to the amount of energy reported as the supplier's obligation by Delmarva to PJM adjusted for

losses in accordance with Delmarva initial and subsequent retail load settlement process. The Delmarva summer period begins on May 1 and ends on August 31, and its non-summer period begins on September 1 and ends on April 30. All price quotes are limited to two decimal places. A successful supplier will be paid its winning bid prices by season as entered and submitted into the World Energy auction platform. The prices will be paid by service type by season and will not change over the length of the contract term. The successful supplier and Delmarva will confirm the prices by executing a Transaction Confirmation Letter in accordance with the FSA.

**Volume Weighting Factors** - The preliminary Summer and Non-Summer factors, listed below, are provided by Delmarva. The energy factors represent Delmarva estimates of the portion of the specified Service Type load within the specified term and season based on historical distribution load data. As stated, these factors are derived from historical data, which may or may not be representative of future behavior of electricity consumption. These factors will be updated prior to the Tranche 1 auction date.

Volume Weighting Factors (%)		
Service Type	Summer	Non-Summer
GS-P	38.35	61.65
LGS	40.83	59.17
MGS	39.90	60.10
RSCI	38.11	61.89

**Load Weighted Average Price** - The Load Weighted Average Energy Price is determined by summing the load weighted price quotes derived by applying the corresponding seasonal volume weighting factors to the respective seasonal price quotes. The Load Weighted Average Energy Price is the single parameter that will be used to compare all offers within each auction.

#### **4.2. Submittal of Proposals**

Product Bids will only be accepted through the World Energy web-based auction platform to be held on November 30, 2008 and January 25, 2009 in accordance with the schedule specified in Section 2.4 (Reverse Auction) and Section 6 (Schedule for RFP Process).

A bid submitted in response to this solicitation, shall a) constitute the Bidder's acknowledgment and acceptance of all the terms, conditions and requirements of this Request For Proposals, and b) shall constitute a firm offer to supply service in accordance with the Full Requirements Service Agreement and applicable Delaware regulations.

This offer is not subject to any contingencies or conditions precedent and, if accepted by Delmarva, the Bidder must agree to execute the Full Requirements Service Agreement in a timely manner as set forth in Section 6 (Schedule for RFP Process) of this Request For Proposals.

#### **4.3. Confirmation of Proposal Receipt**

Confirmation of receipt of a bidder's proposal will appear on the World Energy auction platform electronically.



#### **4.4. Conforming Proposals**

In order for a proposal(s) to be conforming, the proposal(s) must be:

- submitted using the World Energy web-based auction;
- submitted by the due date(s) and due time; and
- submitted by an eligible applicant.

Proposals deviating from the above criteria will be deemed non-conforming and eliminated from further consideration. Any such elimination of proposals will be communicated by Delmarva to the relevant bidder(s) as soon as practicable.

#### **4.5. Expiration of Proposals**

A bidder's proposal(s) shall expire at the earlier of the time Delmarva notifies the bidder that its proposal has been rejected or at midnight on the scheduled day of awarding bids within each tranche, as indicated in Section 6 (Schedule for RFP Process).

#### **4.6. Evaluation of Proposals**

As described in Section 4.1, the Load Weighted Average Energy Price is the single parameter that will be used to compare all offers within each auction. A successful supplier will be paid its winning bid prices by season as entered and submitted into the World Energy auction platform.

In the event that comparable offers from different suppliers have equivalent Load Weighted Average Energy Prices (rounded-up to two decimal places, \$0.01/MWh, in the World Energy auction platform), and such Load Weighted Average Energy Term Price qualifies to be awarded a contract, the bid that is submitted first into the auction platform is the winning bid.

### **5. Full Requirements Service Agreement**

The FSA to be executed as a result of this RFP is provided as Appendix 6. The FSA contains the parties' rights and obligations for providing and receiving full requirements wholesale electric supply, including those rights and obligations associated with performance assurance. No provision within the FSA is negotiable. There will be a master FSA executed with each supplier under which separate Transaction Confirmations will be executed for the specific Service Types and auctions.

### **6. Schedule for RFP Process**

The solicitation and selection process will be carried out in accordance with the schedule below. However, pursuant to Docket No. 04-391, the Commission reserves the right to alter the Services Requested in Section 2 of this RFP five days prior to the auction dates. Such alteration will not occur unless there are exceptional market-altering events directly prior to the date on which bids are submitted.

<u>Activity</u>	<u>Date</u>
RFP Website goes active with due diligence information	Oct 7, 2009
Solicitation for Expressions of Interest	Oct 7
Pre-Bid Conference	Mid Oct
Confidentiality Agreement due	Oct 30
Credit Application and financial information due	Oct 30
Alternative Letter of Credit Form(s) due, if applicable	Oct 30
Alternative Form of Performance Assurance due, if applicable	Oct 30
PJM and FERC qualifications due	Oct 30
Issue applicants' eligibility status	Nov 6
World Energy Solutions Supplier Agreement due	Nov 11
Issue any revisions to 1 <sup>st</sup> tranche bid block targets	Nov 23
1 <sup>st</sup> tranche auctions begin (10:00 AM EPT)	Nov 30
1 <sup>st</sup> tranche auctions end (12:00 PM EPT)	Nov 30
Award 1 <sup>st</sup> tranche bids	Nov 30
Execute 1 <sup>st</sup> tranche FSAs and transactions	Dec 2
Execute Guaranty Agreement, if applicable	Dec 2
Approve 1 <sup>st</sup> tranche transactions	Dec 3
Issue any revisions to 2 <sup>nd</sup> tranche bid block targets	Jan 19, 2010
2 <sup>nd</sup> tranche auctions begin (10:00 AM EPT)	Jan 25
2 <sup>nd</sup> tranche auctions end (11:30 AM EPT)	Jan 25
Award 2 <sup>nd</sup> tranche bids	Jan 25
Execute 2 <sup>nd</sup> tranche FSAs and transactions	Jan 27
Execute Guaranty Agreement, if applicable	Jan 27
Approve 2 <sup>nd</sup> tranche transactions	Jan 28
If necessary, issue 3 <sup>rd</sup> tranche bid block targets	Feb 1
If necessary, issue 3 <sup>rd</sup> tranche auction products	Feb 1
3 <sup>rd</sup> tranche auction(s)	Feb 8
Award 3 <sup>rd</sup> tranche bids	Feb 8
Execute 3 <sup>rd</sup> tranche FSAs and transactions	Feb 10
Execute Guaranty Agreement, if applicable	Feb 10
Approve 3 <sup>rd</sup> tranche transactions	Feb 11
Post retail prices	
3 <sup>rd</sup> tranche is not conducted by Delmarva	Feb 19
3 <sup>rd</sup> tranche is conducted by Delmarva	Mar 5
Contract delivery period begins	June 1

As set forth above and in the FSA, the process for fully executing and approving a FSA and/or transactions within all tranches will be as follows:

- Monday: auctions are held, bids are awarded and Delmarva will forward to the awarded bidder by facsimile a partially executed FSA and/or transactions and by overnight courier three partially executed FSA and/or transactions;
- Wednesday: by 2:00 p.m. EPT, the bidder will return to Delmarva by facsimile a fully executed FSA and/or transactions, followed by overnight courier delivery of two fully executed FSA and/or transactions;
- Wednesday: by close of business, Delmarva will submit a copy of the fully executed transactions to the Delaware Public Service Commission for review and determination of compliance with the Delmarva Bid Plan;
- Friday: transactions will be deemed to be in compliance with the Utility Bid Plan and approved by the Commission unless the Commission orders otherwise.

## 7. RFP Website

Information related to this RFP will be posted on the Delmarva RFP website at [www.delmarva.com/derfp](http://www.delmarva.com/derfp). This website will be accessible by those parties submitting an Expression of Interest Form or retail electricity suppliers that have been qualified by Delmarva to provide retail electric supply services in the Delmarva service territory pursuant to Delmarva Electricity Supplier Coordination Tariff. The information will include:

- a. RFP with the following appended documents
  - Expression of Interest Form
  - Confidentiality Agreement
  - PJM Qualification Certification Form
  - FERC Authorization Certification Form
  - Credit Application
  - World Energy Solutions Supplier Agreement
  - Full Requirements Service Agreement with the following appended documents
    - Transaction Confirmation Example
    - Renewable Energy Obligation
    - Performance Assurance Letter of Credit
    - Sample PJM Invoice
    - Methodology for Calculation of Mark to Market (MTM) Exposure
    - MTM Example Calculation for a Transaction
    - Form of Guaranty
    - Form of Notice
    - Increment Load Example
    - PJM Declaration of Authority
- b. Docket No. 04-391 Phase 1 Order No. 6598, Phase 2 Settlement Agreement, Phase 2 Order No. 6746 and Order No. 6943.
- c. PJM Website Link
- d. Historic, hourly, premise-level, unrestricted (excludes load reductions from demand-

side services that qualify as resources in PJM), distribution load data for all eligible customers (in aggregate) within each Service Type and each customer class or partial customer class within each Service Type. Data provided will be the latest available.

- e. Historic, hourly, premise-level, unrestricted (excludes load reductions from demand-side services that qualify as resources in PJM ), SOS load data within each Service Type and each customer class or partial customer class within each Service Type. Data provided will be the latest available.
- f. Estimated loss factors associated with each Service Type and each customer class or partial customer class within each Service Type
- g. Current capacity PLCs for all eligible customers (in aggregate) within each Service Type and each customer class or partial customer class within each Service Type
- h. Current capacity PLCs for all SOS customers (in aggregate) within each Service Type and each customer class or partial customer class within each Service Type
- i. Historic customer migration data (in aggregate) on a PLC basis and number of customer accounts basis, for each service type, and each customer class or partial customer class within each service type.
- j. Seasonal (summer/non-summer) volume weighting factors by Service Type.
- k. Questions and answers

Delmarva Power will update the above data from time to time.

## **8. Reserved Rights**

### **8.1. Bidder Elimination Right**

If in the course of the solicitation process, any bidder is found to provide faulty information, misrepresent its financial or operational characteristics or omit any pertinent information, Delmarva reserves the right to eliminate such bidder from the solicitation process.

### **8.2. FSA Termination Right**

If a bidder who engages in any conduct described in Section 8.1 is successful in being awarded a bid and executes the FSA and/or transactions, Delmarva reserves the right to terminate the FSA and pursue remedies as outlined in the FSA.

## **9. Miscellaneous**

### **9.1. Warranty on Information**

The information provided in the RFP, or on the Delmarva DE RFP website, has been prepared to assist bidders in evaluating the solicitation. It does not purport to contain all the information that may be relevant to a bidder in satisfying its due diligence efforts. Delmarva makes no representation or warranty, expressed or implied, as to the accuracy or completeness of the information, and shall not, individually or as a corporation, be liable for any representation

expressed or implied in the RFP or any omissions from the RFP, or any information provided to a bidder by any other source.

A bidder should check the Delmarva website frequently, to ensure that it has obtained the latest documentation and information. Neither Delmarva nor its representatives shall be liable to a bidder or any of its representatives for any consequences relating to or arising from the bidder's use of outdated information.

## **9.2. Hold Harmless**

Bidder shall hold Delmarva harmless of and from all damages and costs, including but not limited to legal costs, in connection with all claims, expenses, losses, proceedings or investigations that arise as a result of the RFP or the award of a bid pursuant to the RFP.

## **9.3. Proposals Become Delmarva Property**

Subject to the Confidentiality Agreement, all proposals submitted by each bidder pursuant to this solicitation shall become the exclusive property of Delmarva.

## **9.4. Bidder's Acceptance**

The submission of a proposal to Delmarva shall constitute a bidder's acknowledgment and acceptance of all the terms, conditions and requirements of this solicitation and the FSA and or transactions.

Bidder and its representatives irrevocably agree to submit to the personal jurisdiction of any Delaware State or Federal court and any appellate court thereof in respect of any action, dispute or proceeding arising out of this solicitation process, including but not limited to the execution, implementation and performance of a FSA.

## **9.5. Permits, Licenses and Compliance with the Law**

Supplier shall obtain all licenses and permits that may be required by any governmental body or agency necessary to conduct supplier's business or to perform hereunder. Supplier's subcontractors, employees, agents and representatives of each in performance hereunder shall comply with all applicable governmental laws, ordinances, rules, regulations, orders and all other governmental requirements.

## **9.6. Proprietary Information**

The treatment of proprietary and confidential information of a bidder's and of Delmarva is addressed in the Confidentiality Agreement (Appendix 2).

## **9.7. Disclosure of Awarded Bid Information**

As set forth in the Phase 2 settlement agreement and further modified by the Commission in Docket No. 04-391, certain information related to the winning bidders and their awarded bids will be made public 21 calendar days from the date of the Commission's award of bids for the final tranche.. Such information is as follows:

- Aggregate information about bids received and winning bids;

- Names of winning bidders for each customer class;
- Percentage of load won by each winning bidder (by name) for each customer class;

#### **9.8. Regulatory Approvals**

As indicated in Section 6 (Schedule for RFP Process), the executed transactions will be contingent upon the Delaware Public Service Commission and any necessary FERC approvals. The transactions will be deemed approved by the Delaware Commission unless the Commission orders otherwise within the two days following the execution of the transactions. Bidder agrees to cooperate, to the fullest extent necessary, to obtain any and all required State, Federal or other regulatory approvals of the FSA and/or transactions resulting from its proposal(s).

## Appendix 1

### Expression of Interest Form (on RFP Website)

This response is an indication of our interest in the Delmarva Power & Light Request For Proposals to provide wholesale full requirements service beginning [date of first day of delivery period].

Company\*:

Contact Name\*:

Contact Title\*:

Address\*:

City\*:

State\*:

Zip\*:

Phone Number\*:

Fax Number\*:

E-mail Address\*:

*\*Note completion of all fields is required.* Upon Delmarva's receipt of this Expression of Interest Form, a password will be issued to respondent to access a website containing additional information related to this RFP.

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## Appendix 2

### Confidentiality Agreement

[Name and Address of Company]

[Date]

Ladies and Gentlemen,

This letter is a Confidentiality Agreement between \_\_\_\_\_ (“Utility”) and \_\_\_\_\_ (“the Company”) in connection with the Company’s intent to participate in the Request for Proposals (“RFP”) to provide Full Requirements Wholesale Electric Power Supply to serve a portion of the Utility’s Residential and Small Commercial & Industrial FP-SOS, Medium General Service-Secondary FP-SOS, Large General Service-Secondary FP-SOS and General Service- Primary FP-SOS. This Confidentiality Agreement also pertains to the rights and obligations of the Utility and the Company in the event the Company ultimately is selected as a winner in the RFP and provides service pursuant to the Full Requirements Service Agreement (“FSA”). Utility and the Company hereby agree to accept, and to be bound by the terms of this Agreement.

#### DEFINITIONS:

(a) The following terms have the following meanings:

1. “Agreement” is this Confidentiality Agreement.
2. “Delaware PSC” has the meaning set forth in Section 3(b).
3. “Confidential Information” has the meaning set forth in Section 5.
4. “Party” means Utility or the Company.
5. “Parties” means Utility and the Company collectively.
6. “Representatives” means the officers, directors, employees, advisors, lenders, and other persons, including but not limited to any affiliates who are actively and directly participating in evaluating, responding to, negotiating and consummating the RFP and/or the response to the RFP. A person or entity is not a “Representative” unless that person or entity agrees to preserve the confidentiality of the Confidential Information in accordance with the

Delmarva  
2010 Request for Proposals



terms of this Agreement.

7. "Third Parties" means a party or parties other than Utility, the Company or their respective Representatives.

(b) Other capitalized terms used in this Agreement have the meaning set forth in this Agreement and/or the Request for Proposals dated \_\_\_\_\_ and/or the FSA.

#### TERMS:

1. Condition Precedent. The Utility and the Company shall execute this Agreement as a condition precedent to Utility's furnishing to the Company or the Company furnishing to the Utility a copy of any Confidential Information.

2. Purpose. The purpose of this Agreement is to protect the confidentiality of the Confidential Information and to restrict the use and disclosure of that information in the manner set forth below.

3. Limitations on Use and Disclosure. (a) A Party shall use the other Party's Confidential Information only for the purpose of evaluating, responding to, negotiating and consummating the RFP and/or the response to the RFP, and/or consummating the FSA, and not for any other purpose. Neither Party shall disclose to Third Parties any information about the Utility's or Company's participation in the RFP or execution of an FSA, or the terms or conditions or any other facts relating thereto, including the fact that discussions are taking place with respect thereto, the status of those discussions, or the fact that Confidential Information has been made available by or to the Utility or Company or their Representatives. Provided, however, as set forth in the Phase 2 settlement agreement and further modified by the Delaware Public Service Commission in Docket No. 04-391, the Utility shall publicly disclose aggregate information about bids received and winning bids, the names winning bidders for each customer class, and the percentage of load won by each winning bidder (by name) for each customer class, 21 calendar days from the date of the Commission's award of bids for the final tranche.

(b) Notwithstanding the foregoing or any other provision of this Agreement, the Utility may share any Confidential Information with the Delaware Public Service Commission, its Staff, or the Consultant working for the Delaware Public Service Commission pursuant to Section III of the Settlement Agreement approved by the Commission in Order No. 6746 (collectively "Delaware PSC"). Any such information shared will be designated as confidential, and the Utility will ask the Delaware PSC to hold and use it on a confidential basis. To the extent that the Delaware Division of the Public Advocate and its representatives and/or consultants (collectively "DPA") enter into a confidentiality agreement to hold any shared information confidentially, Utility may also share Confidential Information with DPA for the purposes of DPA's review of the results of the RFP.

4. Disclosure upon Default. Notwithstanding the foregoing or any other provision of the Agreement, the Utility may disclose Confidential Information in the event of a Supplier Default, as provided for in the FSA. The Utility may disclose to any Company with whom it has executed

an FSA and who is not a Defaulting Supplier, the contract price of the Defaulting Supplier for the purpose of allowing the Company to make the election provided for in Section 4.11 of the FSA.

5. Definition of Confidential Information. Confidential Information shall consist of oral, electronic and written information that is confidential, proprietary, or generally not available to the public. Whenever possible, such Confidential Information shall be marked prior to or at the time of disclosure as being "Confidential Information". Confidential Information in the case of information provided by Utility to the Company shall include, without limitation, all data, reports, interpretations, forecasts or records relating to Utility and/or its customers, and any other document created by Utility or others which directly or indirectly relates to all or any portion of the bid evaluation information provided to the Company by Utility. Confidential Information in the case of information provided by the Company to the Utility shall include, without limitation, all data, reports, interpretations, forecasts, bids, credit information, credit collateral amounts, bidder identity, and shall also include information prepared by the Company that includes directly or indirectly Confidential Information furnished by Utility.

6. Non-Confidential Information. Notwithstanding the provisions of Section 5, information shall not be deemed confidential that (i) becomes generally available to the public; (ii) is already known to the receiving Party at the time of receipt by the receiving Party; or (iii) is acquired after such receipt from a Third Party not known to the receiving Party to be prohibited from making disclosures. The receiving Party shall give prompt notice to the other Party in the event it believes that any of the other Party's information in its possession is not Confidential Information as a result of the provisions of this Section 6.

7. Property of Utility or the Company. Confidential Information belonging to Utility shall consist of Confidential Information supplied by Utility to the Company and shall also include the portion of Confidential Information furnished by the Company to Utility that incorporates Confidential Information furnished to the Company by Utility. Confidential Information belonging to the Company consists of all other Confidential Information supplied by the Company to Utility. Utility and the Company acknowledge that each Party's Confidential Information is and at all times remains the sole and exclusive property of that Party, who, it is agreed, has the exclusive right, title, and interest to its Confidential Information. Neither Party grants any right or license, by implication or otherwise, as a result of the provision of Confidential Information to the receiving Party.

8. Disclosure Prohibited Except Where Explicitly Permitted. Neither Party shall disclose or use the other Party's Confidential Information without the other Party's prior written consent except as explicitly stated in Sections 3, 4, 9 and 10 of this Agreement.

9. Disclosure For Bid Evaluation Purposes. A Party may disclose the other Party's Confidential Information to its Representatives for the purposes set forth in Section 3. The obligations and restrictions under this Agreement that apply to a Party also apply to a Party's Representatives.

10. Disclosure to Governmental Authorities. A Party (the "disclosing Party") may also

disclose the other Party's Confidential Information to any governmental, judicial, or regulatory authority ("Authority") requiring such Confidential Information; provided that, the disclosing Party (a) promptly informs the other Party of the substance of any inquiries, requests or requirements in order to afford the other Party an opportunity to attempt to prevent or limit the disclosure of the Confidential Information; (b) makes a good faith effort to persuade the Authority (i) that submission of the Confidential Information should not be required, or, if that effort fails, (ii) that submission of the Confidential Information on a non-public basis should be permitted; and (c) endeavors in good faith to protect the Confidential Information provided to an Authority from disclosure to Third Parties. If an Authority orders the disclosing Party to disclose any documents containing the other Party's Confidential Information, the disclosing Party shall a) attempt to obtain from the other Party, if the Authority allows the time, a "Public Disclosure Copy", or b) if the Authority does not allow such time, shall prepare itself a "Public Disclosure Copy" in which the Confidential Information has been redacted to the extent that such redaction is permitted by the Authority requiring disclosure. Confidential Information disclosed pursuant to this Section 10 on a non-public basis shall not lose its status as Confidential Information by virtue of such non-public disclosure.

Notwithstanding the foregoing, the Parties agree that either party may be required to provide Confidential Information to FERC in order to comply with FERC Form 1 or FERC transaction reporting requirements. Each Party agrees that to the extent it is required to provide FERC any such information, the Party required to provide such information will provide only the information that is reasonably necessary to comply with such reporting requirements and shall not be required to comply with the provisions of Section 10 of this Agreement unless there have been substantive changes to the information required for FERC reporting purposes.

11. Termination of RFP Participation. If the Company determines that it does not wish to proceed with the RFP, or if the Utility excludes the Company from the RFP for any of the reasons set forth in the RFP, it will immediately notify the other Party of that decision. In such case, or if the RFP is not consummated, upon the written request of the Party (the "requesting Party"), the other Party (the "receiving Party") shall not retain and shall promptly return to the requesting Party all the requesting Party's written Confidential Information in the possession of the receiving Party or its Representatives, except for the portion ("said portion") of the requesting Party's Confidential Information that may be found in analyses, compilations, or other documents prepared by, or for, the receiving Party and its Representatives. The said portion and any oral Confidential Information furnished by the requesting Party and not so requested or returned will be held by the receiving Party and kept subject to the terms of this Agreement, or destroyed.

12. Liability and Relief. A Party or any of its Representatives shall be liable for any breach of this Agreement. In the event a non-breaching Party or its Representatives shall have knowledge of any breach of the confidentiality of, or the misappropriation of, any of the Confidential Information, the non-breaching Party shall promptly give notice thereof to the breaching Party. The non-breaching Party shall be entitled to specific performance or other equitable relief by way of injunction or otherwise, if the other Party or any of its Representatives breach or threaten to breach any of the provisions of this Agreement. Such remedy shall not be deemed to be the exclusive remedy available to the non-breaching Party, but shall be in addition to all other available remedies. Neither failure nor delay by the non-breaching Party, in

exercising any of its rights or privileges herein, shall operate as a waiver nor shall any single or partial exercise preclude any other or further exercise of any right, power or privilege.

13. Representatives, Successors and Assigns. This Agreement shall be binding upon and for the benefit of the Parties, and their respective Representatives, successors, and permitted assigns. Neither Party may assign its rights or obligations hereunder without prior written consent of the other Party.

14. Controlling Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Delaware without regard to conflicts of laws rules or principles

15. Full Compliance Required. The failure in any instance to insist on full compliance with the terms of this Agreement shall not be deemed to be a waiver of the right to insist upon full compliance with these terms thereafter.

16. Signatures. The signatures below establish each Party's agreement to the terms hereof.

17. Termination. This Agreement shall terminate three years from the date hereof.

**COMPANY**

By \_\_\_\_\_

Title \_\_\_\_\_

**UTILITY**

By \_\_\_\_\_

Title \_\_\_\_\_

### Appendix 3 PJM Qualification Certification Form

I, \_\_\_\_\_ (“Agent”) am an authorized signatory for  
\_\_\_\_\_ (“Company”) and hereby certify that Company is a member  
of the PJM Interconnection, LLC (“PJM”) and qualified as a market buyer and market seller in  
good standing able to secure generation or otherwise obtain and delivery electricity in PJM  
through compliance with all applicable requirements of PJM to fulfill a full requirements  
obligation.

Signed:

Date:

\_\_\_\_\_  
Type or Print Name:

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Company:

Upon completion, please mail this form to:

DELMARVA DE SOS RFP Coordinator  
Pepco Holdings Inc.  
701 Ninth Street, NW  
Suite 6411  
Washington DC, 20068

Or send by facsimile to the following number:

DELMARVA DE SOS RFP Coordinator  
(202) 872-3350

## Appendix 4

### FERC Authorization Certification Form

I, \_\_\_\_\_ (“Agent”) am an authorized signatory for  
\_\_\_\_\_ (“Company”) and hereby certify that Company has been  
authorized by the Federal Energy Regulatory Commission (“FERC”) to make sales of energy,  
capacity and ancillary services at market based rates, pursuant to the Federal Power Act and the  
provisions of FERC’s regulations promulgated thereunder. The Company’s authorization to  
make such sales at market based rates was granted in Docket No(s). \_\_\_\_\_

Signed:

Date:

\_\_\_\_\_  
Type or Print Name:

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Company:

Upon completion, please mail this form to:

DELMARVA DE SOS RFP Coordinator  
Pepco Holdings Inc.  
701 Ninth Street, NW  
Suite 6411  
Washington DC, 20068

Or send by facsimile to the following number:

DELMARVA DE SOS RFP Coordinator  
(202) 872-3350

Delmarva  
2010 Request for Proposals

## Appendix 5

### Credit Application

The following information will be used to assess the applicant's creditworthiness.

#### 1. Company Information

Type of Business

- ☐ Corporation
- ☐ Limited Liability Company
- ☐ Joint Venture
- ☐ Other (describe)

Applicant Organization

Legal Corporate Name:

Street Address:

City, State, Zip Code:

Dun & Bradstreet Number:

Federal Tax ID Number:

Applicant Credit Contact Name

Name:

Title:

Phone Number:

Fax Number:

Email Address:

For Corporation/Limited Liability Companies

Date and State of Incorporation/Registration:

Registered Agent Name:

Street Address:

City, State, Zip Code:

For Limited Partnerships

Name of General Partner:

Address of General partner/Registered Agent:

City, State, Zip Code:

#### 2. Application for Credit Basis

This application for credit is to be based on the creditworthiness of the Applicant indicated below.

- ☐ The applicant listed under section 1.

\_\_\_ The parent company listed below.

Parent Guarantor Company

Legal Corporate Name:

Street Address:

City, State, Zip Code:

Dun & Bradstreet Number:

Federal Tax ID Number:

### 3. Credit Information

The Applicant indicated in section 2 is required to submit the most recent 2 years of financial statements audited by a firm of certified public accountants of national standing. Indicate below what statements are being submitted.

\_\_\_ Annual Report

\_\_\_ 10K

\_\_\_ 10Q

\_\_\_ Other (describe)

In the event the above information is inadequate to appropriately assess the Applicant's creditworthiness, the Applicant must provide evidence of its capability to provide collateral instruments, its capability to borrow and other sources of liquidity

All submitted information must be in the English language, and financial data denominated in United States currency, and conform to generally accepted accounting principles (GAAP) in the United States. If the Applicant's financial information is consolidated with other entities, then it is the Applicant's responsibility to extract and submit as separate documents all data and information related solely to the Applicant. This must include all financial information, associated notes and all other information that would comprise a full financial report conforming to GAAP. If the applicant's, or its Guarantor's, financial data does not meet the above criteria, the following information is required in order to determine eligibility:

- a. Most recent audited annual financial information (including a balance sheet, income statement, and cash flow statement).
- b. Most recent quarterly or mid-year audited financial information; if audited quarterly or mid-year financial information is not available, please provide most recent quarterly or mid-year financial information accompanied by an attestation by the applicant's, or its Guarantor's Chief Financial Officer (or other approved authority) that the information submitted is true, correct and a fair representation of the applicant's or Guarantor's financial condition.
- c. Credit Rating information (including rating, rating agency and date of rating).



- d. A legal opinion acceptable to the Utilities of counsel qualified to practice in the foreign jurisdiction in which the Guarantor, if applicable, is incorporated or otherwise formed that the Guaranty is, or upon the completion of execution formalities will become, the binding obligation of the Guarantor in the jurisdiction in which it has been incorporated or otherwise formed.
- e. Any additional information the applicant or its Guarantor wish to give that could provide comparable credit assurances to those that are provided by other applicants or Guarantors whose financial data is denominated in the United States currency, and conform to generally accepted accounting principles (GAAP) in the United States.

Has the applicant or predecessor company declared bankruptcy in the last 5 years?

- ☐ Yes  
☐ No

Are there any pending bankruptcies or other similar state or federal proceedings, outstanding judgments or pending claims or lawsuits that could affect the solvency of the applicant?

- ☐ Yes  
☐ No

If the answer is "Yes" to either of the above questions, please provide an addendum to this application describing the situation and how it affects the applicant's ability to meet or not to meet its credit obligations.

#### Applicant's Credit Ratings

##### Standard & Poors

Last Rating Date:

Senior Unsecured Long Term Debt Rating:

##### Moody's

Last Rating Date:

Senior Unsecured Long Term Debt Rating:

##### Fitch

Last Rating Date:

Senior Unsecured Long Term Debt Rating:

Along with the above information, attach the latest review from each of the agencies.

#### 4. Authorization

Applicant hereby represents and warrants that all statements and representations made herein, including any supporting documents, are true to the best of Applicant's knowledge and belief. The undersigned authorized official of the Applicant warrants that the Applicant agrees to be bound by these representations. The applicant authorizes the above listed entities to release data requested by Delmarva necessary to perform a credit check in connection with Applicant's interest to bid on the Full Requirements Wholesale Electric Power Supply RFP.

Applicant's Company Name: \_\_\_\_\_

Signature of Authorized Official: \_\_\_\_\_

Name of Authorized Official (*print*): \_\_\_\_\_

Title of Authorized Official (*print*): \_\_\_\_\_

Date Signed: \_\_\_\_\_

**Appendix 6****WORLD ENERGY SOLUTIONS SUPPLIER AGREEMENT****WHOLESALE PARTICIPANT AGREEMENT**

THIS WHOLESALE PARTICIPANT AGREEMENT (the "Agreement"), effective this \_\_\_\_\_ day of \_\_\_\_\_ 2009 (the "Effective Date"), is made and entered into, by and between World Energy Solutions, Inc., a Delaware corporation ("World Energy"), having offices at 446 Main Street, Worcester, Massachusetts 01608, and \_\_\_\_\_, a \_\_\_\_\_ corporation ("Participant"), together with World Energy, the "Parties" and each individually, a "Party", having offices at \_\_\_\_\_. This Agreement constitutes Agreement No. \_\_\_\_\_ for the purposes of record-keeping by the Parties.

**RECITALS**

**WHEREAS**, World Energy operates web sites at [www.worldenergy.com](http://www.worldenergy.com) and [green.wesplatform.com](http://green.wesplatform.com) (the "Exchange") on which registered energy participants may participate in forward or reverse auctions, through which such Participants provide Bids or Offers to meet Customers' requirements for natural gas, electric capacity, electric energy, environmental and other commodity supplies based on information regarding energy related requirements posted by the Customer;

**WHEREAS**, Participant desires to license access to the Exchange in order to become a Participant and to participate in such reverse and/or forward auctions and World Energy wishes to grant such license subject to the terms and conditions set forth herein;

**NOW THEREFORE**, in consideration of the mutual promises contained herein, and other valuable and sufficient consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. **DEFINITIONS.** The following definitions shall apply to the Agreement:

1.1. "Affiliate" of a Party means (i) any other party controlling, controlled by, or under common control with such Party or (ii) any other person or entity in any way affiliated with such party, where "control" of an entity means ownership of fifty percent (50%) or more of the voting or ownership rights of an entity.

1.2. "Bid" means an offer to buy a specific quantity of a commodity at a stated price.

1.3. "Contract Award Fee" means the fee payable from Participant to World Energy for each Customer Contract, in an amount equal to the product of the Rate per Unit set forth in Wholesale Participant Agreement 20090105

the applicable Fee Addendum multiplied by the applicable number of Units, as specified in the Fee Addendum, which Participant physically or financially supplies to or receives from the Customer.

1.4. "Customer" means a third party customer that enters into an agreement with World Energy for the solicitation of bids to meet that Customer's energy needs.

1.5. "Customer Contract" means, for each RFP, an agreement between Participant or any of its Affiliates and the Customer or any of its Affiliates in which Participant or such Affiliate agree to provide to or receive from such Customer or such Affiliate with energy related contracts to buy or sell supplies as specified in the RFP, which agreement is executed within eighteen (18) months of the date when the bidding on such RFP is closed.

1.6. "Customer Information" means information included in an RFP provided by a Customer to World Energy regarding projected energy needs, maximum pricing and historical energy needs.

1.7. "Documentation" means the information related to the use of the Exchange, as provided by World Energy to Participants and Customers on the Exchange.

1.8. "Exchange" has the meaning set forth in the Recitals hereto.

1.9. "Fee Addendum" a notice substantially in the form of Attachment 1 hereto that is sent by email notification by World Energy to Participant and is incorporated by reference herein.

1.10. "Intellectual Property Rights" means any trade secrets, patents, copyrights, trademarks, know-how, moral rights and similar rights of any type under the laws of any governmental authority, domestic or foreign, including all applications and registrations relating to any of the foregoing.

1.11. "Internal Use" means the use of the Exchange by Participant to Bid or Offer to meet Customers' energy needs. Specifically, but without limitation, under no circumstances shall Internal Use include the processing of information for any third party or for the purpose of competing with World Energy.

1.13. "Offer" means an indication of willingness to sell at a given price; opposite of bid, the price level of the offer may be referred to as the "ask".

1.14. "RFP" means a request for proposals provided to prospective Participants via the Exchange which may set forth a Customer's projected energy related objectives, such as the maximum Offer permitted or minimum Bid by such Customer and other pertinent information

which may be useful to Participants in determining whether and how to participate.

1.15. "Term" has the meaning set forth in Section 5 below.

## 2. LICENSES; OWNERSHIP.

2.1. Subject to the terms and conditions of this Agreement, World Energy hereby grants to Participant, for the Term of this Agreement, a non-exclusive, non-transferable, non-sublicensable license to access and use the Exchange and Documentation as hosted by World Energy, solely for the Participant's own Internal Use.

2.2. No licenses to any Intellectual Property Rights of World Energy are granted or shall be implied hereunder except to the extent necessary for exercise of its rights under Section 3.1 hereof.

2.3. Participant agrees and acknowledges that World Energy (or its third-party providers) retains ownership of all right, title and interest to all portions of the Exchange and Documentation and all Intellectual Property Rights therein, and that, other than the license granted herein, Participant shall not obtain or claim any rights in or ownership interest to the Exchange, or any associated Intellectual Property Rights. Participant further acknowledges that the Exchange contains the valuable trade secrets and proprietary information of World Energy and third party licensors and that any breach by Participant of the license restrictions contained herein or of World Energy's proprietary rights in the Exchange is likely to cause World Energy substantial and irreparable harm and will not be susceptible of cure by the payment of monetary damages.

## 3. USE OF THE EXCHANGE

3.1. Participant hereby agrees to use the Exchange solely for its Internal Use and will not sell, lease, store or provide, directly or indirectly, the Exchange or any portion thereof to any third party. Participant agrees to protect World Energy's proprietary rights in the Exchange, to comply with reasonable requests made by World Energy to protect World Energy's contractual, statutory and common law rights in the Exchange and not in any way to tamper with the functionality of the Exchange or to copy pages from the Exchange or their content except where expressly permitted on the Exchange. Without limiting the foregoing, Participant agrees not to transmit any material to the Exchange that contains any viruses, Trojan horses, worms, or other computer programming routines that may damage, interfere with, intercept, copy or misappropriate any system, data or information relating to the Exchange.

3.2. Participant may not modify, copy, distribute, transmit, display, perform, reproduce, publish, license, reverse engineer, decompile, create derivative works from, transfer, or sell any information, software, products or services obtained from the Exchange.

3.3. In order to use the Exchange, World Energy shall provide Participant with a user name and password which Participant must use in order to gain access to the Exchange. Participant shall keep its user name and password in strictest confidence, limiting access and disclosure to those employees of Participant with a need to know. Participant hereby assumes all responsibility and liability associated with the use of such user name and password by its employees or any other persons to whom Participant or any of its employees disclose such information.

3.4. World Energy may, in its sole discretion, with or without notice, temporarily or permanently suspend the operation of Participant's use of the Exchange. World Energy reserves the right to make any and all changes to the Exchange in its sole discretion, without notice to Participant.

3.5. Participant acknowledges that its use of the Exchange may be restricted or limited as a result of federal, state or other applicable laws, the regulations and rules of the local Public Utilities Commission, the Commodities Exchange commission, the Securities and Exchange Commission, or other regulatory organizations. Participant shall act in accordance with all restrictions and limitations so imposed, and it will be a material breach of this Agreement for Participant to evade any such restrictions and/or limitations. Participant further acknowledges that its use of the Exchange may be restricted or limited as a result of World Energy policies and procedures in effect from time to time.

3.6. Without limitation, Participant shall not make any speculative, false, or fraudulent posting of information, requests for proposals or bids. Fraudulent posting of such information will be considered a breach and shall result in immediate termination of Participant's access to the Exchange.

3.7. The Exchange may provide links to other web sites or resources. Participant hereby acknowledges and agrees that World Energy is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible for any content, advertising, products, or other materials on or available from such sites or resources. Participant further agrees that World Energy shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, products or services available on such external sites or resources.

3.8. PARTICIPANT ACKNOWLEDGES AND AGREES THAT NEITHER THE EXCHANGE NOR World Energy is in any way responsible for completion of a customer contract. ANY CUSTOMER CONTRACTS MUST BE COMPLETED BY PARTICIPANT AND THE APPLICABLE CUSTOMER OUTSIDE THE SCOPE OF THIS AGREEMENT AND THE EXCHANGE. NO BINDING COMMITMENT BETWEEN PARTICIPANT AND A CUSTOMER IS CREATED THROUGH THIS AGREEMENT OR THE EXCHANGE.

#### 4. FEES AND PAYMENT TERMS.

4.1. Participant hereby agrees to pay to World Energy each Contract Award Fee payable on energy supplies that were awarded to the Participant during the auction process and actually executed by the Customer and Participant. For the RFPs designated as having known fixed quantities, payment is due 30 days after the Participant has been notified regarding the award of the RFP.

*For the RFPs designated as having unknown or variable quantities, the awarded Participant hereby agrees to pay World Energy each Contract Award Fee payable on energy supplies that were measured as having been physically or financially supplied by the Participant and paid for by the Customer in a calendar month, payment is due within 10 days of the end of each such calendar month.*

4.2. Once Participant is awarded energy supplies during the auction process, World Energy will generate and send an email confirmation containing the Fee Addendum to the Participant representative who submitted the Bid(s) during the relevant Auction and s/he shall indicate acceptance of such Fee Addendum by replying to the email notification with an affirmative response. Participant agrees that payment of the Contract Award Fees stated in the Fee Addendum shall be due in accordance with the terms of the Agreement upon Participant's acceptance of the Fee Addendum, and no additional signed writing shall be required between Participant and World Energy obligating Participant to pay such fees.

4.3. All Contract Award Fees payable hereunder shall be paid in United States Dollars and sent to the address set forth in Section 10.6 hereof. No Contract Award Fees are refundable or cancelable, except as set forth in Section 4.7.

4.4. Participant agrees to make and keep full and accurate books and records in sufficient detail to enable Contract Award Fees payable to World Energy hereunder to be determined. An electronic record will accompany each payment to World Energy indicating the amount of Units consumed, service period, and Contract Award Fee owed World Energy. World Energy shall have the right to make an audit of the books and records of Participant that pertain to the calculation of Contract Award Fees. World Energy shall treat as confidential all information obtained in such audit and shall not disclose the same to others, except to the extent necessary to enforce World Energy's rights hereunder. On five (5) days' prior written notice to Participant, World Energy or its representative shall have full access to the books and records of Participant necessary to confirm whether Contract Award Fees are due to World Energy under this Agreement, and World Energy shall have the right to make copies thereof at Participant's expense. World Energy shall have such access during normal business hours. Prompt adjustment shall be made to reflect the results of such audit. If it is determined following such audit that any Contract Award Fee for the period covered by such audit was not paid by Participant, then Participant shall reimburse World Energy for the reasonable out-of-pocket costs of such audit incurred by World Energy within thirty (30) days after World Energy's demand therefor, along with the shortfall of payments of Contract Award Fees, and with interest on the shortfall amount at the rate applicable to late payments hereunder as set forth below.

4.5. All overdue payments shall bear interest of the lesser of (i) the rate of one and one-half percent (1.5%) per month or (ii) the maximum rate allowed by law, in either case plus World Energy's cost of collection (including reasonable attorney's fees).

4.6. Participant shall be solely responsible for the payment of any and all taxes arising, out of Participant's use of the Exchange, including, but not limited to, any sales, use, access and/or business taxes, excluding taxes based on the income of World Energy.

4.7. If a Customer Contract is terminated for any reason, all Contract Award Fees applicable to that Customer Contract will cease on the effective date of contract termination. If Participant is later paid for any portion of the energy purchased by Customer from Participant under an RFP, whether by voluntary payment or damages, Participant shall immediately pay to World Energy the portion of the applicable Contract Award Fee allocable to the paid energy amount.

## 5. TERM AND TERMINATION.

5.1. The term of this Agreement shall commence on the Effective Date and continue until terminated pursuant to this Section 5 (the "Term").

5.2. Either Party may terminate this Agreement upon thirty (30) days prior written notice; provided that, upon any termination of this Agreement, the license granted in Section 2 and all other rights of the Parties under this Agreement shall terminate, except that, notwithstanding the foregoing, the rights and obligations under Sections 2.3, 3.2, 4, 5, 6, 7, 8, 9 and 10 herein shall continue in full force and effect.

5.3. Neither Party shall be liable to the other Party for any costs or damages of any kind, including incidental or consequential damages, or for indemnification, solely on account of the lawful termination of this Agreement, even if informed of the possibility of such damages.

## 6. INDEMNITY.

6.1. World Energy agrees to indemnify, defend and hold harmless Participant and its officers, directors, employees, agents, successors and assigns from and against any and all losses, liabilities, damages, penalties and claims and all related costs and expenses (including reasonable attorneys' fees) related to claims made by third parties against Participant alleging that the use of the Exchange by Participant infringes the patents, copyrights, trademarks or service marks or other intellectual property rights of such third parties (a "Third Party Infringement Claim").

6.2. Participant agrees to indemnify, defend and hold harmless World Energy and its officers, directors, employees, agents, successors and assigns from and against any and all losses, liabilities, damages, penalties and claims and all related costs and expenses (including reasonable



attorneys fees) related to claims (i) that Participant or Participant's use of the Exchange are restricted or barred by any governmental rule, regulation or statute and/or (ii) based on dispute between Participant and a Customer or any other third party other than a Third Party Infringement Claim.

6.3. Each Party agrees to promptly notify the indemnifying party in writing of any indemnifiable claim. The indemnifying party shall control the defense and settlement of an indemnifiable claim. The indemnified party shall cooperate in all reasonable respects with the indemnifying party and its attorneys in the investigation, trial, defense and settlement of such claim and any appeal arising therefrom. The indemnified party may participate in such investigation, trial, defense and settlement of such claim and any appeal arising therefrom, through its attorneys or otherwise, at its own cost and expense. No settlement of a claim that involves a remedy other than the payment of money by the indemnifying party shall be entered into without the consent of the indemnified party, which consent shall not be unreasonably withheld.

6.4. Should the Exchange become, or in World Energy's sole discretion be likely to become, the subject of any claim or action for infringement, World Energy may (a) procure for Participant the right to continue using the Exchange as contemplated hereunder; (b) modify the Exchange to render the Exchange non-infringing; or (c) if the foregoing alternatives are not reasonably available to World Energy, terminate this Agreement without any further obligation or liability whatsoever to Participant.

## 7. WARRANTIES AND DISCLAIMER.

7.1. WORLD ENERGY MAKES NO WARRANTY WHATSOEVER AS TO THE EXCHANGE, THE ACCURACY OF CUSTOMER INFORMATION, OR ANY SERVICES PROVIDED BY WORLD ENERGY HEREUNDER, EXPRESS OR IMPLIED. PARTICIPANT EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE EXCHANGE IS PROVIDED BY WORLD ENERGY AND ANY THIRD PARTY PROVIDERS ON AN "AS IS", "AS AVAILABLE" BASIS AT PARTICIPANT'S SOLE RISK. WORLD ENERGY EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT.

7.2. WORLD ENERGY, AND ITS OFFICERS, AFFILIATES, EMPLOYEES AND AGENTS SHALL HAVE NO LIABILITY, CONTINGENT OR OTHERWISE, TO PARTICIPANT OR TO THIRD PARTIES, FOR THE ACCURACY, TIMELINESS, COMPLETENESS, RELIABILITY, PERFORMANCE OR CONTINUED AVAILABILITY OF THE EXCHANGE OR FOR DELAYS OR OMISSIONS THEREIN, OR FOR INTERRUPTIONS IN THE DELIVERY OF THE EXCHANGE OR ANY SERVICES OFFERED BY WORLD ENERGY THEREUNDER. WORLD ENERGY SHALL NOT HAVE ANY RESPONSIBILITY TO INFORM PARTICIPANT OF ANY DIFFICULTIES

EXPERIENCED BY WORLD ENERGY OR ANY THIRD PARTIES WITH RESPECT TO USE OF THE EXCHANGE OR TO TAKE ANY ACTION IN CONNECTION THEREWITH. FURTHER, WORLD ENERGY SHALL HAVE NO DUTY OR OBLIGATION TO VERIFY, CORRECT, COMPLETE OR UPDATE ANY INFORMATION DISPLAYED ON THE EXCHANGE.

8. DISCLAIMER AND LIMITATION OF LIABILITY.

8.1. EXCEPT FOR FEES PAYABLE IN ACCORDANCE WITH SECTION 4 ABOVE, IN NO EVENT SHALL EITHER PARTY OR THEIR RESPECTIVE OFFICERS, AFFILIATES, EMPLOYEES AND AGENTS BE LIABLE TO THE OTHER PARTY FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR FOR SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, MULTIPLE, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES OF ANY KIND, WHETHER BASED IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION, NEGLIGENCE), WARRANTY, GUARANTEE OR ANY OTHER LEGAL OR EQUITABLE GROUNDS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.2. TO THE EXTENT ALLOWED BY APPLICABLE LAW, IN NO EVENT SHALL WORLD ENERGY'S LIABILITY ARISING HEREUNDER EXCEED THE AMOUNT OF FEES DUE BY PARTICIPANT TO WORLD ENERGY UNDER THIS AGREEMENT. FURTHER, IN NO EVENT SHALL WORLD ENERGY'S LIABILITY ARISING UNDER ANY FEE ADDENDUM OR RFP EXCEED THE AMOUNT OF FEES DUE BY PARTICIPANT TO WORLD ENERGY UNDER SUCH FEE ADDENDUM AND/OR RFP.

8.3. NEITHER PARTY SHALL MAKE REPRESENTATIONS OR WARRANTIES TO ANY THIRD PARTY ON BEHALF OF THE OTHER PARTY AND IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY REPRESENTATION OR WARRANTY MADE TO ANY THIRD PARTY BY THE OTHER PARTY. THE LIMITATIONS CONTAINED IN THIS SECTION 8.3 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT AND APPLY NOTWITHSTANDING THE VALIDITY OF THE LIMITED REMEDIES PROVIDED FOR IN THIS AGREEMENT.

9. USE OF INFORMATION; CONFIDENTIALITY.

9.1. Participant's Information. The name and pricing information (if applicable) that Participant may provide to World Energy via the Exchange, together with information regarding the manner in which Participant uses the Exchange, will not be processed or disclosed by World Energy except as contemplated by this Agreement. Participant agrees that World Energy may share with other parties aggregate information, gathered by World Energy in the course of its operation of the Exchange. "Aggregate Information" is information that describes the habits,

pricing data, usage patterns and/or demographics of Participant and other users as a group but does not describe or reveal Participant's identity. Further provisions concerning the privacy of information Participant submits to the Exchange are contained in the privacy policy, to the extent set forth on the Exchange and as such privacy policy may be amended by World Energy in its sole discretion from time to time (the "Privacy Policy").

9.2. World Energy's Information. Participant shall not disclose the terms and conditions of this Agreement or any Fee Addendum hereto, including without limitation the fees charged to Participant by World Energy, to any third party without the express prior written consent of World Energy.

## 10. GENERAL PROVISIONS.

10.1. Independent Contractors. The Parties to this Agreement are independent parties and nothing herein shall be construed as creating an employment relationship between the Parties. Neither Party is an agent or representative of the other Party and neither Party shall have any right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability, or to otherwise bind, the other Party. The Agreement shall not be interpreted or construed to create an association, agency, joint venture or partnership between the Parties or to impose any liability attributable to such a relationship upon either Party.

10.2. Entire Agreement. The Agreement, including any exhibits or schedules attached hereto, constitutes the entire understanding and agreement with respect to its subject matter, and supersedes any and all prior or contemporaneous representations, understandings and agreements, whether oral or written, between the Parties relating to the subject matter of this Agreement, all of which are merged in this Agreement.

10.3. Severability of Provisions. In the event that any provision of this Agreement is found to be invalid or unenforceable pursuant to judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable according to its terms.

10.4. Assignment. This Agreement shall inure to the benefit of and be binding upon the Parties hereto, their successors and permitted assigns. None of the rights, duties and obligations of any Party hereunder may be assigned without the prior written consent of the other Party; provided, however, that each Party may assign this Agreement to an Affiliate or to the surviving entity in a merger or consolidation in which it participates, or to a purchaser of all, or substantially all, of its businesses related to this Agreement so long as such surviving entity or purchaser shall expressly assume, in writing, the performance of all of the applicable terms of this Agreement.

10.5. Governing Law; Attorneys' Fees. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts without giving effect to applicable conflict of laws provisions. Each Party hereby agrees to the exclusive jurisdiction of the courts in Suffolk

County, Massachusetts; provided that nothing herein shall prevent either Party from seeking injunctive relief in any relevant jurisdiction. In the event any litigation or other proceeding is brought by either Party in connection with this Agreement, the prevailing Party in such litigation or other proceeding shall be entitled to recover from the other Party all costs, attorneys' fees and other expenses incurred by such prevailing Party in such litigation.

10.6. Notices. Except as specifically provided in this Agreement, all notices required hereunder shall be in writing and shall be given by personal delivery, overnight courier service, registered mail, or via facsimile transmission, to the Parties at their respective addresses or facsimile number set forth below, or at such other address(es) or facsimile number as shall be specified in writing by such Party to the other Party in accordance with the terms and conditions of this Section 10.6. All notices shall be deemed to have been given on the day of actual receipt thereof. Notices shall be sent as follows:

If to World Energy:  
World Energy Solutions, Inc.  
446 Main Street  
Worcester, MA 01608  
Attn: Legal Department

Facsimile Number: 508-459-8101

If to Participant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

10.7. Waiver. No waiver of any provision of this Agreement, or any rights or obligations of either Party under this Agreement, shall be effective, except pursuant to a written instrument signed by the Party or Parties waiving compliance, and any such waiver shall be effective only in the specific instance and for the specific purpose stated in such writing. The failure of either Party to require the performance of any term of this Agreement or the waiver of either Party of any breach under this Agreement shall not operate or be construed as a waiver of any other provision hereof, nor shall it be construed as a waiver of any subsequent breach by the other Party hereto.

10.8. Headings. The section and paragraph headings used in this Agreement are

inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.

10.9. Amendment. The terms and conditions of this Agreement may not be modified or amended other than by a writing signed by both Parties.

10.10. Force Majeure. Either Party shall be excused from any delay or failure in performance hereunder (excluding payment obligations) caused by reason of any occurrence or contingency beyond its reasonable control, including but not limited to, acts of God, earthquake, labor disputes and strikes, riots, war, common carrier interruptions, breakdown in facilities and government requirements. Notwithstanding the foregoing, a change in economic conditions or technology shall not be deemed a Force Majeure event. The obligations and rights of the Party so excused shall be extended on a day-to-day basis for the period of time equal to that of the Force Majeure event.

10.11. Execution in Counterparts and by Facsimile. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute but one and the same instrument. This Agreement may be executed and delivered by facsimile and the Parties agree that such facsimile execution and delivery shall have the same force and effect as delivery of an original document with original signatures, and that each Party may use such facsimile signatures as evidence of the execution and delivery of this Agreement by all Parties to the same extent that an original signature could be used.

IN WITNESS WHEREOF, the Parties have duly executed and delivered this Participant Agreement Number \_\_\_\_\_ as of the date first set forth above.

WORLD ENERGY SOLUTIONS, INC.

[INSERT PARTICIPANT NAME]

By: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Name:

Title:

Title:

## ATTACHMENT 1

### Form of Fee Addendum

Fee Addendum for RFP No., effective this \_\_\_\_ day of \_\_\_\_\_, 2009 applicable to Participant Agreement No. \_\_\_\_\_. [to be assigned by World Energy upon execution of this Agreement and be the same for each subsequent Fee Addendum].

World Energy Solutions, Inc. and [Participant Name] agree that the following shall be incorporated by reference into the Participant Agreement between the Parties as a Fee Addendum subject to the terms, conditions and definitions of such Participant Agreement.

The Participant has entered into a contract with the Customer in accordance with the terms and conditions of the RFP(s) listed below.

Customer:

Energy commodity:

*(Language for RFPs designated as having known fixed quantities)*

RFP #	RFP Date	Contract \$	Usage	UOM	Fee	Invoice \$	Invoice #

The one-time Contract Award Fee is \_\_\_\_\_. The fixed fee is based on a Rate per Unit, detailed in the table above, per (MWh/Dth/MW, etc.) multiplied by the known fixed total quantity in the table above. Payment is due thirty (30) days after the Participant has been notified regarding the award of the RFP

*(Language for RFPs designated as having unknown or variable quantities)*

RFP #	RFP Date	RFP Usage	UOM	Fee

The Rate per Unit shall equal \$0. \_\_ per \_\_\_\_\_. [Insert Unit, e.g. MWH, DTH, MW, etc.]. The awarded Participant agrees to pay World Energy each Contract Award Fee payable on energy supplies that were measured as having been physically or financially supplied by the Participant and paid for by the Customer in a calendar month. Payment is due within ten (10) days of the end of each such calendar month.

## **Appendix 7**

### **Full Requirements Service Agreement**

## **ATTACHMENT 2**



# FULL REQUIREMENTS SERVICE AGREEMENT

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## FULL REQUIREMENTS SERVICE AGREEMENT

THIS FULL REQUIREMENTS SERVICE AGREEMENT ("Agreement" or "FSA"), is made and entered into as of \_\_\_\_\_ ("Effective Date"), by and between \_\_\_\_\_, hereinafter referred to as "Seller" and Delmarva Power & Light Company, hereinafter referred to as "Buyer" (each hereinafter referred to individually as "Party" and collectively as "Parties").

### WITNESSETH:

WHEREAS, the Delaware PSC Orders direct Buyer to supply electric service to Standard Offer Service Load ("SOS Load") within Buyer's Delaware franchise service territory; and

WHEREAS, the Delaware legislature has enacted a law establishing a Renewable Energy Portfolio Standard applicable to retail electricity suppliers serving customers in the State of Delaware; and

WHEREAS, Buyer has solicited offers for serving all or a portion of its SOS Load pursuant to a Request for Proposal ("RFP") and the Seller is a winning bidder in that solicitation; and

WHEREAS, Seller desires to sell Full Requirements Service and Buyer desires to purchase such Full Requirements Service to supply a Specified Percentage in Buyer's Delaware franchised service territory on a firm and continuous basis; and

NOW, THEREFORE, and in consideration of the foregoing, and of the mutual promises, covenants, and conditions set forth herein, and other good and valuable consideration, the Parties hereto, intending to be legally bound by the terms and conditions set forth in this Agreement, hereby agree as follows:

### ARTICLE 1 DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following definitions shall apply hereunder:

"Affiliate" means, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

"Aggregate Buyer's Exposure" means all Buyer's Exposure for Aggregate Transactions.

"Aggregate Transactions" means all Transactions under this Agreement and all other transactions under full requirements service agreements executed between the Parties pursuant to the Delaware PSC Orders.

"Ancillary Services" shall have the meaning ascribed thereto in the PJM Agreements.

"Bankrupt" means, with respect to any entity, such entity: (i) voluntarily files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it by its creditors and such petition is not dismissed within sixty (60) calendar days of the filing or commencement; (ii) makes an assignment or any general arrangement for the benefit of creditors; (iii) otherwise becomes insolvent, however evidenced; (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or (v) is generally unable to pay its debts as they fall due.

"Base Load Percentage" means the percentage of the Monthly Settlement Load that the Monthly Settlement Base Price is applicable to, as set forth in Section 6.2 (Base Load Percentages).

"Bid Block" means a block(s) of load awarded to Seller in accordance with Buyer's RFP as set forth in a Transaction Confirmation.

"Bid Plan" shall have the meaning ascribed to it in the PSC Settlement.

"Business Day" means any day except a Saturday, Sunday or a day that PJM declares to be a holiday, as posted on the PJM website. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time ("EPT").

"Buyer Downgrade Event" means that Buyer's (or Buyer's Guarantor's) Credit Rating is less than BBB- by S&P, BBB- by Fitch or Baa3 by Moody's.

"Buyer's Exposure" during the term of a Transaction shall be deemed equal to the positive difference between: (i) the MtM Exposure pursuant to a Transaction under this Agreement; less (ii) the sum of any unpaid or unbilled amounts owed by Buyer to Seller pursuant to a Transaction under this Agreement. With respect to the preceding sentence, "unbilled amounts owed by Buyer" shall consist of a good faith estimate by Buyer as to any amounts which will be owed by Buyer for service already rendered by Seller under a Transaction.

"Capacity" means "Unforced Capacity" as set forth in the PJM Agreements, or any successor measurement of the capacity obligation of a Load Serving Entity as may be employed in PJM (whether set forth in the PJM Agreements or elsewhere).

"Capacity Peak Load Contribution" or "Capacity PLC" means the aggregation of retail customer peak load contributions, as determined by the Buyer in accordance with the PJM Agreements and reported by Buyer to PJM pursuant to Buyer's retail load

settlement process, and used by PJM in determining the Seller's capacity obligation for each Transaction.

"Commercial and Industrial" or "C&I" as used herein shall include all customers that are not classified under Buyer's Delaware Electric retail tariff as residential, street lighting, separately metered water heating, or separately metered space heating customers.

"Congestion Revenue Rights" or "CRR" means the current or any successor congestion management mechanism or mechanisms as may be employed by PJM (whether set forth in the PJM Tariff or elsewhere) for the purpose of allocating financial congestion hedges.

"Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions, PJM charges, and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its SOS Load obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.

"Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody's or Fitch.

"Current Capacity PLC Per Bid Block" means, on any given Business Day, for each Transaction, the product of: (i) the aggregate Capacity PLC for an entire Service Type; and (ii) the quotient of (x) the Specified Percentage and (y) the number of Bid Blocks.

"Declaration of Authority" shall have the meaning ascribed to it in Section 4.9 (Declaration of Authority).

"Default Damages" means, for the period of time specified in Section 12.2(b)(ii) (Remedies) any direct damages and Costs, calculated in a commercially reasonable manner, that the Non-Defaulting Party incurs with respect to the Specified Percentage as a result of an Event of Default. Direct damages may include, but are not limited to: (i) the positive difference (if any) between the price of Full Requirements Service hereunder and the price at which the Buyer or Seller is able to purchase or sell (as applicable) Full Requirements Service (or any components of Full Requirements Service it is able to purchase or sell) from or to third parties, including PJM; (ii) Emergency Energy charges; and (iii) additional transmission or congestion costs incurred to purchase or sell Full Requirements Service.

"Delaware PSC" or "Commission" means the Delaware Public Service Commission and any successor thereto.

"Delaware PSC Orders" means: (i) Order No. 6598 issued on March 22, 2005; and (ii) Order No. 6746 issued on October 11, 2005.

"Delivery Period" means the period of delivery for a Transaction as specified in a Transaction Confirmation.

"Delivery Point" means points on the PJM Control Area, as elected by Seller, and is the location at which Seller will deliver and Buyer will accept the Specified Percentage during the Delivery Period.

"DPA" means the Delaware Division of the Public Advocate.

"Eastern Prevailing Time" or "EPT" means Eastern Standard Time or Eastern Daylight Savings Time, whichever is in effect on any particular date.

"Emergency Energy" shall have the meaning ascribed to it in the PJM Agreements.

"Energy" means three-phase, 60-cycle alternating current electric energy, expressed in units of kilowatt-hours or megawatt-hours.

"Equitable Defenses" means any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

"FERC" means the Federal Energy Regulatory Commission or its successor.

"Fitch" means Fitch Investor Service, Inc. or its successor.

"Fixed Price SOS" or "FP-SOS" shall have the meaning ascribed to it in the PSC Settlement.

"Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not foreseen as of the date a Transaction is entered into, which is not within the reasonable control of, or the result of the negligence of the affected party and which, by the exercise of due diligence, the Party is unable to mitigate or avoid or cause to be avoided. Notwithstanding the foregoing, under no circumstance shall an event of Force Majeure be based on: (i) the loss or failure of Seller's supply; (ii) Seller's ability to sell the Full Requirements Service at a price greater than that received under any Transaction; (iii) curtailment by a Transmitting Utility; or (iv) Buyer's ability to purchase the Full Requirements Service at a price lower than paid under any Transaction.

"Full Requirements Service" means all necessary Energy, Capacity, Transmission other than Network Integration Transmission Service, Ancillary Services, transmission and distribution losses, congestion management costs, and such other services or products that are required to supply the Specified Percentage except for Network Integration Transmission Service, distribution service, and Renewable Energy Resource requirement.

"Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from a Terminated Transaction, determined in a commercially reasonable manner.

"Generator Attribute Tracking System" or "GATS" means the system owned and operated by PJM Environmental Services, Inc. to provide environmental and emissions attributes reporting and tracking services to its subscribers in support of Delaware's Renewable Energy Portfolio Standard and any environmental disclosure requirements that may arise, along with requirements in other state jurisdictions.

"Governmental Authority" means any federal, state, local, municipal or other governmental entity, authority or agency, department, board, court, tribunal, regulatory commission, or other body, whether legislative, judicial or executive, together or individually, exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power over a Party or this Agreement.

"GS-P FP-SOS" is the FP-SOS available to Buyer's customers in service classification GS-P.

"Guarantor" means any party, who may agree to guarantee Seller's financial obligations under this Agreement pursuant to the guaranty agreement, attached hereto as Exhibit F, recognizing that such a party will be obligated to meet Buyer's credit requirements for Seller.

"Hourly Priced Service" or "HPS" means that form of SOS provided to GS-T customers and those GS-P customers that elect such service.

"HPS Electing GS-P Customers" means GS-P customers that have interval meters and make a timely affirmative election to take HPS.

"Increment Load Percentage" means the percentage of the Monthly Settlement Load that is in excess of the Base Load Percentage.

"Interest Rate" means, for any date, the lesser of: (i) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%); and (ii) the maximum rate permitted by applicable law.

"kWh" means one kilowatt of electric power over a period of one hour.

"Letter(s) of Credit" means one or more irrevocable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having a credit rating of at least A- from S&P or A3 from Moody's and a minimum of \$10 billion in assets, in a form acceptable to the Party in whose favor the letter of credit is issued (for clarification, the form of Letter of Credit attached as Exhibit C hereto shall be considered an acceptable form). Costs of a Letter of Credit shall be borne by the applicant for such

Letter of Credit. The Party to whom the Letter of Credit is in favor reserves the right to monitor the financial position of the issuing bank and, if the issuing bank's Credit Rating is downgraded by any increment; or if the issuing bank's Current, Quick, Return on Assets, or Price/Earnings ratios diminish (reflecting the financial stability of the bank); or if the Party determines, for any reason, that the issuing bank's position has deteriorated, then the Party has the right to demand and receive, from the applicant for the Letter of Credit, that the Letter of Credit be reissued from a bank that meets or exceeds the credit ratings and asset valuation listed above.

"LGS-S FP-SOS" is the FP-SOS available for Buyer's customers in service classification LGS-S.

"Load Serving Entity" or "LSE" shall have the meaning ascribed to it in the PJM Agreements.

"Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.

"Mark to Market Exposure or "MtM Exposure" means, with respect to each month remaining in each Transaction Delivery Period, the sum of: (i) the relevant month On-Peak Forward Price minus the relevant month On-Peak Initial Mark Price, multiplied by the relevant month On-Peak Estimated Energy Quantity; and (ii) the relevant month Off-Peak Forward Price minus the relevant month Off-Peak Initial Mark Price, multiplied by the relevant month Off-Peak Estimated Energy Quantity. The method and an example for calculating the MtM Exposure are included in Exhibit E.

"MGS-S FP-SOS" is the FP-SOS available to Buyer's customers in service classification MGS-S.

"Monthly Settlement Amount" means with respect to any calendar month during the Delivery Period, the sum of: (i) the product of the applicable Monthly Settlement Base Price and Monthly Settlement Base Load; and (ii) any other adjustments as set forth in this Agreement.

"Monthly Settlement Base Load" means, with respect to any calendar month during an applicable Delivery Period, the product of Monthly Settlement Load and Base Load Percentage.

"Monthly Settlement Base Price" means the price for Monthly Settlement Base Load for the applicable month of the Delivery Period as set forth in a Transaction Confirmation.

"Monthly Settlement Date" means, with respect to any calendar month of a Delivery Period, the date determined to be the PJM Settlement Date pursuant to the PJM Agreements.



"Monthly Settlement Load" means, with respect to any calendar month during an applicable Delivery Period, the product of Specified Percentage and SOS Load.

"Moody's" means Moody's Investor Services, Inc. or its successor.

"MWh" means one megawatt of electric power used over a period of one hour which shall be rounded in a manner consistent with standards in the PJM Agreements. The current rounding standards are to the nearest one-thousandth of a megawatt hour.

"NERC" means the North American Electric Reliability Corporation or any successor organization thereto.

"Network Integration Transmission Service" shall have the meaning ascribed to it in the PJM Agreements.

"Off-Peak Estimated Energy Quantity" means, for each month in each Transaction, the product of: (i) the relevant month Off-Peak Estimated Energy Quantity Per 50 MW Capacity PLC; (ii) the quotient of the Current Capacity PLC Per Bid Block and 50; (iii) the number of Bid Blocks awarded to the Supplier per the Transaction Confirmation; (iv) the percentage of Off-Peak Hours remaining (excluding current day) in each month; and (v) the Base Load Percentage.

"Off-Peak Estimated Energy Quantity Per 50 MW Capacity PLC" means the estimation of Energy, inclusive of electrical line losses, in the Off-Peak Hours for each of the twelve (12) calendar months, as set forth in the Transaction Confirmation.

"Off-Peak Forward Price" means the price, as provided by the Pricing Agent, for Off-Peak Hours, stated in terms of \$/MWh, associated with each month remaining in a Transaction Delivery Period, and shall equal the product of: (i) the relevant month On-Peak Forward Price; and (ii) the relevant month Off-Peak/On Peak Price Ratio.

"Off-Peak Hours" means those hours which are not On-Peak Hours.

"Off-Peak Initial Mark Price" means the Off-Peak Forward Price as of the Transaction Date.

"On-Peak Estimated Energy Quantity" means, for each month in each Transaction, the product of: (i) the relevant month On-Peak Estimated Energy Quantity Per 50 MW Capacity PLC; (ii) the quotient of the Current Capacity PLC Per Bid Block divided by 50; (iii) the number of Bid Blocks awarded to the Supplier per the Transaction Confirmation; (iv) the percentage of On-Peak Hours remaining (excluding current day) in each month; and (v) the Base Load Percentage.

"On-Peak Estimated Energy Quantity Per 50 MW Capacity PLC" means the estimation of Energy, inclusive of electrical line losses, in the On-Peak Hours for each of the twelve (12) calendar months, as set forth in the Transaction Confirmation.

"On-Peak Forward Price" means the price, as provided by the Pricing Agent, for On-Peak Hours, stated in terms of \$/MWh, associated with each month remaining in a Transaction Delivery Period, and based on the most recent publicly available information and/or quotes from Reference Market-Makers on forward Energy transactions occurring at the PJM Western Hub.

"On-Peak Hours" means Hour Ending ("HE") 0800 through HE 2300 EPT, Monday through Friday, excluding Saturday, Sunday and NERC holidays.

"On-Peak Initial Mark Price" means the On-Peak Forward Price as of the Transaction Date.

"Off-Peak/On-Peak Price Ratio" means the relevant monthly ratio of off-peak pricing to on-peak pricing of the PJM Western Hub day ahead prices as set forth by Buyer each October based on the previous 36-month period ending in September. The historical on-peak prices used for the ratio will be the PJM Western Hub day ahead price for the On-Peak Hours. The historical off-peak prices used for the ratio will be the PJM Western Hub day ahead prices for the Off-Peak Hours. For each month of the 36-month period, the monthly on-peak and off-peak prices will be summed and respectively divided by the amount of on-peak and off-peak hours in that month. The then calculated off-peak average price will be divided by the on-peak average price to determine the individual monthly ratios. Such monthly ratios for the same months within the 36-month period will then be summed and divided by three (3) to come up with the rolling three year monthly ratio average.

"Performance Assurance" means collateral in the form of cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.

"PJM" means the PJM Interconnection, LLC or any successor organization thereto.

"PJM Agreements" means the PJM OATT, PJM Operating Agreement, PJM RAA, PJM Manuals and any other applicable PJM bylaws, procedures, manuals or documents, or any successor, superseding or amended versions that may take effect from time to time.

"PJM Control Area" shall have the meaning ascribed to it in the PJM Agreements.

"PJM Load Response Programs" shall have the meaning ascribed to it in the PJM Agreements.

"PJM OATT" or "PJM Tariff" means the Open Access Transmission Tariff of PJM or the successor, superseding or amended versions of the Open Access Transmission Tariff that may take effect from time to time.

"PJM Operating Agreement" means the Operating Agreement of PJM or the successor, superseding or amended versions of the Operating Agreement that may take effect from time to time.

"PJM Planning Period" shall have the meaning ascribed to it in the PJM Agreements. Currently, the PJM Planning Period is the twelve months beginning June 1 and extending through May 31 of the following year.

"PJM RAA" means the PJM Reliability Assurance Agreement or any successor, superseding or amended versions of the PJM Reliability Assurance Agreement that may take effect from time to time.

"PJM Settlement Date" means the date on which payments are due to PJM for services provided by PJM in accordance with the PJM Agreements. Such date currently occurs on the first Business Day after the nineteenth (19<sup>th</sup>) calendar day of the month following service.

"Pricing Agent" shall be the person or entity described in Article 14.6, and Exhibit E.

"PSC Settlement" means the settlement(s) in Delaware PSC Docket No. 04-391, approved by the Delaware Public Service Commission prior to the Effective Date.

"Reference Market-Maker" means any broker in energy products who is not an Affiliate of Buyer or Seller.

"Renewable Energy Portfolio Standard" shall have the meaning ascribed to it in the Renewable Energy Portfolio Standards Act (26 Del. C. §§ 351-363).

"Renewable Energy Resource" shall have the meaning ascribed to it for a resource that qualifies under the Renewable Energy Portfolio Standards Act (26 Del. C. §§ 351-363) towards meeting a requirement that a percentage or otherwise defined amount of power be generated from such resources.

"Request for Proposal" or "RFP" means the request for proposals issued from time to time by Buyer pursuant to the PSC Settlement.

"Residential and Small Commercial and Industrial FP-SOS" (R and Small C&I FP-SOS) is the FP-SOS available to Buyer's customers in service classifications R, R-TOU, R-TOU-ND, R-TOU-SOP, SGS-S-ND, OL, ORL, X and that portion of a customer's load served as separately metered space heating load or as separately metered water heating load, irrespective of whether the remainder of the customer's load is served under a service classification other than those listed above.

"S&P" means Standard & Poor's Ratings Group, a division of McGraw Hill, Inc. and any successor thereto.

"Service Type" means the customer class, partial customer class and/or group of customer classes, as set forth in a Transaction Confirmation.

"Settlement Amount" means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such Party incurs as a result of the liquidation of a Terminated Transaction pursuant to Article 12 (Events of

Default – Remedies). The calculation of a Settlement Amount for a Terminated Transaction shall exclude any Default Damages calculated pursuant to Section 12.2(b)(ii) for the same Terminated Transaction. For the purposes of calculating the Termination Payment, the Settlement Amount shall be considered an amount due to the Non-Defaulting Party under this Agreement if the total of the Losses and Costs exceeds the Gains and shall be considered an amount due to the Defaulting Party under this Agreement if the Gains exceed the total of the Losses and Costs.

“Specified Percentage” means the percentage of SOS Load as set forth in a Transaction Confirmation.

“Standard Offer Service Load” or “SOS Load” means the total sales at the retail meter, plus Unaccounted For Energy, expressed in MWh or MW, as appropriate, for a particular class(es) of retail customers being served by Buyer pursuant to the PSC Settlement, as such sales vary from hour to hour, in Buyer’s Delaware franchise service territory, as such territory exists on the Effective Date or may increase or decrease due to de minimis geographic border changes to the service territory that exists on the Effective Date. For purposes of clarification, SOS Load shall not include changes in the Buyer’s Delaware service territory which occur as a result of a merger, consolidation, or acquisition of another entity which has a franchised service territory in Delaware or a result of a significant franchise territory swap with another entity which has a franchised service territory in Delaware.

“Tangible Net Worth” or “TNW” means an entity’s total assets (exclusive of intangible assets), minus that entity’s total liabilities, each as would be reflected on a balance sheet prepared in accordance with generally accepted accounting principles, and as of the relevant date of determination most recently filed with the United States Securities and Exchange Commission.

“TNW Amount” shall equal the product of the applicable TNW Percentage and an entity’s Tangible Net Worth.

“TNW Percentage” means the percentage determined pursuant to Section 14.3 (Unsecured Credit) that is multiplied by an entity’s Tangible Net Worth to determine that entity’s TNW Amount.

“Transaction” means a particular agreement by which Buyer purchases and Seller sells Full Requirements Service pursuant to this Agreement, the details of which are more fully set forth in a Transaction Confirmation.

“Transaction Confirmation” shall have the meaning ascribed to it in Section 2.8.

“Transaction Date” means the date that a Transaction is executed as set forth in the Transaction Confirmation.

“Transmitting Utility” means the utility or utilities and their respective control area operators and their successors, transmitting Full Requirements Service.

"Unaccounted For Energy" means the difference between the Buyer's hourly system load and the sum of: (i) the estimated hourly customer loads (interval metered and profiled); and (ii) electrical losses, as such Unaccounted For Energy is determined in the Buyer's retail load settlement process.

"Unsecured Credit" means an amount that is the lower of: (i) the relevant Unsecured Credit Cap; (ii) the relevant TNW Amount, as determined pursuant to Section 14.3 (Unsecured Credit); or (iii) the Guaranty Amount from Seller's Guarantor as set forth in the Guaranty Agreement.

"Unsecured Credit Cap" shall have the meaning ascribed to it in Section 14.3.

"Weekly Settlement Date" means, with respect to any week of the month of a Delivery Period, the date(s) determined to be the PJM Settlement Dates pursuant to the PJM Agreements and schedules.

"Weekly Settlement Amount" means with respect to any Weekly Settlement Date during the Delivery Period, the product of the Weekly Settlement Price and Weekly Settlement Load.

"Weekly Settlement Base Load" means, with respect to any Weekly Settlement Date during an applicable Delivery Period, the product of Weekly Settlement Load and Base Load Percentage.

"Weekly Settlement Base Price" means price for Weekly Settlement Base Load for the applicable week of the Delivery Period and has the same value as the Monthly Settlement Base Price.

"Weekly Settlement Load" means, with respect to any Weekly Settlement Date during an applicable Delivery Period, the product of Specified Percentage and SOS load.

## ARTICLE 2

### TERMS AND CONDITIONS OF FULL REQUIREMENTS SERVICE

- 2.1 Seller's Obligation To Provide Service. With respect to a Transaction, Seller shall provide Full Requirements Service on a firm and continuous basis such that the Specified Percentage is supplied during the Delivery Period.
- 2.2 Buyer's Obligation to Take Service. With respect to a Transaction, Buyer shall accept Full Requirements Service as provided by Seller pursuant to Section 2.1 (Seller's Obligation to Provide Service), and shall pay Seller the Weekly Settlement Amounts and the Monthly Settlement Amount for such Full Requirements Service on the applicable Weekly Settlement Date and Monthly Settlement Date in accordance with Section 7.3 (Payments of the Invoice).

- 2.3 Network Integration Transmission Service, Distribution Service, and Renewable Energy Resource Requirement. With respect to a Transaction, Buyer shall be responsible, at its sole cost and expense, for the provision of Network Integration Transmission Service, distribution service and the Renewable Energy Resource Requirement necessary to serve the Specified Percentage. Buyer is responsible, at its sole cost and expense, for future PJM charges assessed to network transmission customers for PJM-required transmission system enhancements pursuant to the PJM Regional Transmission Expansion Plan and for future PJM charges assessed to network transmission customers for transition costs related to the elimination of through-and-out transmission rates.
- 2.4 Other Changes in PJM Charges. Except as provided in Section 2.3 (Network Integration Transmission Service and Distribution Service), Seller bears the risk of any other changes in PJM products and pricing during the term of this Agreement. However if there are any other new FERC-approved PJM transmission charges other than those referred to in Section 2.3 or other new PJM charges and costs, charged to network transmission customers, that Seller believes the Buyer should recover through retail rates because they are directly related to the Buyer's obligations under the PSC Settlement, then Buyer will file with the Delaware PSC, and provide notice to all Parties (as that term is used in the PSC Settlement), a request for approval to recover such new costs. Seller is required to intervene in any such proceeding before the Delaware PSC. Such new costs can only be charged by Seller to Buyer to the extent that the Delaware PSC approves Buyer's recovery of those costs. Seller agrees to be bound by the decision of the Delaware PSC (subject to the normal rules for appeal of the decision of the Delaware PSC) and waives all claims concerning this issue before FERC. Notwithstanding the foregoing, nothing in this Agreement shall preclude Seller from taking any position before FERC regarding the creation and allocation of any such PJM charges.
- 2.5 Status of Seller. Seller, for purposes of this Agreement and any Transaction, is not a Load Serving Entity and nothing contained herein shall be deemed to cause Seller to be a Load Serving Entity.
- 2.6 Sales for Resale. All Full Requirements Service provided by Seller to Buyer shall be sales for resale, with Buyer reselling such Full Requirements Service to SOS Load customers. At Seller's request, Buyer shall provide Seller with mutually agreeable resale certificates related to the Full Requirements Service provided pursuant to this Agreement.
- 2.7 Governing Terms. Each Transaction shall be governed by this Agreement. This Agreement, including all exhibits hereto, any designated collateral, credit support, margin agreement or similar arrangements and all Transaction Confirmations shall form a single integrated agreement between Buyer and Seller. Any inconsistency between terms in this Agreement and terms in a Transaction Confirmation shall be resolved in favor of the terms of this Agreement.

- 2.8 Transaction Confirmation. A Transaction shall be documented in a Transaction Confirmation in the form attached hereto as Exhibit A. On the Business Day on which Seller is selected as a provider of Full Requirement Service, Buyer will forward by facsimile or other immediate means acceptable to both Parties, to Seller a partially executed Transaction Confirmation(s) and shall send by overnight delivery three (3) originals. Separate Transaction Confirmations will be executed for each winning bid. Should such Transaction(s) be the initial Transaction(s) with the Seller under the current RFP solicitation, then Buyer will forward by facsimile or other immediate means acceptable to both Parties, to Seller a partially executed Agreement, and shall send by overnight delivery three (3) originals. Except as otherwise provided in the RFP, by 2:00 p.m. EPT on the next Business Day following Seller's receipt of such facsimile of partially executed Transaction Confirmation(s) and Agreement, as applicable, Seller shall return by facsimile, or other immediate means acceptable to both Parties, to Buyer a fully executed Transaction Confirmation(s), and the Agreement signature page, as applicable, and shall send by overnight delivery two (2) originals. By close of the same Business Day on which Buyer is in receipt of such facsimile of fully executed Transaction Confirmation(s) and Agreement, as applicable, Buyer shall submit a copy of the Transaction Confirmation(s) to the Delaware PSC for review and determination of compliance with the Buyer's Bid Plan. The Transaction Confirmation(s) and Agreement will be deemed to be in compliance with the Bid Plan and approved by the Commission unless the Commission orders otherwise within two (2) Business Days following the submission.

### ARTICLE 3 SCHEDULING, FORECASTING, AND INFORMATION SHARING

- 3.1 Scheduling. Seller shall schedule Full Requirements Service pursuant to the PJM Agreements. Buyer will provide to PJM all information required by PJM, for the purpose of calculating Seller's Full Requirements Service obligations.
- 3.2 Load Forecasting. Buyer shall not be required to provide to the Seller any load forecasting services for any Transaction.
- 3.3 Information Sharing.
- (a) On each Business Day after execution of this Agreement and to the end of the Delivery Period, Buyer shall provide to the Seller, on a reasonable efforts basis, Buyer's estimation of the Capacity PLC for the seventh following day, representing the Seller's Specified Percentage of each Service Type. Buyer does not warrant the accuracy of such information.
  - (b) On each Business Day of the Delivery Period, Buyer shall provide to the Seller, on a reasonable efforts basis, the energy and capacity information related to Seller's obligations under this Agreement that Buyer provides to PJM daily. Such information provided to the Seller shall be disaggregated by Service Type,

Transaction, voltage level, and customer class or partial customer class, where applicable. Buyer does not warrant the accuracy of such information.

(c) Beginning two (2) weeks prior to the beginning of the Delivery Period, on each Business Day until the Delivery Period, Buyer shall post on its website the estimated Capacity PLC for each Service Type on a reasonable efforts basis. Buyer does not warrant the accuracy of such information.

(d) Beginning two (2) weeks prior to the beginning of the Delivery Period, on each Business Day until the Delivery Period, Buyer shall post on its website the estimated SOS Load for each of the Buyer's Service Types on a reasonable efforts basis. Buyer does not warrant the accuracy of such information.

## ARTICLE 4

### SPECIAL TERMS AND CONDITIONS

- 4.1 Congestion and Congestion Management. Seller is responsible for any congestion costs incurred to supply the Specified Percentage. Notwithstanding Section 2.5 (Status of Seller), Buyer shall transfer or assign to Seller, Buyer's rights to Congestion Revenue Rights (CRRs) to which Buyer is entitled as an LSE pursuant to the PJM Agreements, provided that such rights are related to the service being provided to the Specified Percentage. All rights and obligations associated with such CRRs will accrue to the Seller through the transfer or assignment from Buyer to Seller including the ability of Seller to request or nominate such CRRs when applicable. Seller shall have the right to request and nominate CRRs if: (i) all Transactions for SOS Load have been executed and are in full force and effect; and (ii) the Delivery Period under each Transaction Confirmation is inclusive of the PJM Planning Period for which the CRRs are being requested or nominated. Should the conditions above not be met, the entity recognized by PJM as having the right to make the nominations at that time will nominate such CRRs for the upcoming PJM Planning Period and such CRRs will be allocated to Seller based upon its Specified Percentage. The allocation of CRRs associated with the Specified Percentage will be in accordance with the PJM Agreements.
- 4.2 Load Response Programs. Buyer will manage its load response programs in accordance with PJM Agreements as amended from time to time and with the provisions of its applicable riders and retail electric service tariffs, as amended and approved by the Delaware PSC from time to time or distribution utility customer contracts, as amended by the distribution utility from time to time.
- (a) Buyer shall be responsible for complying with all PJM Load Response program operating rules (including resource nominations, compliance reports, load drop estimates, and special studies) and any penalties assessed in accordance with the PJM Agreements for failure to implement its load response programs when so requested by PJM. Buyer shall be responsible for maintaining and operating any equipment currently relied upon to operate existing load response programs.



- (b) Buyer shall retain all of the benefits associated with its load response programs and shall be responsible for all customer incentive payments.
  - (c) No claim shall be recognized that Buyer's operation of load response programs affects any Operating Reserve costs incurred by Seller.
- 4.3 PJM E-Accounts. Buyer and Seller shall work with PJM to establish any PJM E-Accounts necessary for Seller to provide Full Requirements Service. Buyer shall establish PJM E-Account contract(s) for the entire duration of the Transaction(s) and Seller shall confirm the PJM E-Account contract(s) for the entire duration of the Transaction(s).
- 4.4 Delaware Environmental Disclosure Requirements. To the extent that any environmental disclosure requirements are imposed on sellers of electricity within Delaware and subject to any applicable confidentiality requirements, Seller shall provide to Buyer, to the best of its knowledge, the generation resources used to supply Full Requirements Service, including fuel mix and environmental disclosure data. Seller and Buyer recognize that, due to difficulties in identifying specific generation resources used to meet Seller's obligations, the fuel mix and environmental data provided pursuant to this Section 4.4 may, in many instances, be based on aggregated data published by PJM. All information provided pursuant to this Section 4.4 (Delaware Environmental Disclosure Requirements) shall be provided in a timely manner and in an appropriate form (including to the extent applicable, information provided within the GATS) to enable Buyer to comply with the requirements of the Delaware PSC or any other Governmental Authority that relate to reporting such information.
- 4.5 Title Transfer. Seller shall cease to have title to, possession of, and risk of loss with respect to liability pursuant to Sections 9.1 (Seller's Indemnification for Third-Party Claim) and 9.2 (Buyer's Indemnification for Third-Party Claim) of Full Requirements Service scheduled and received or delivered hereunder at the Delivery Point(s). Seller warrants that it has good title to the Full Requirements Service sold and delivered hereunder and that it has the right to sell such Full Requirements Service. The word "loss" in this Section 4.6 (Title Transfer) does not encompass electrical transmission and distribution losses. As between Buyer and Seller only, Buyer shall take title to, possession of, and risk of loss with respect to liability pursuant to Sections 9.1 (Seller's Indemnification for Third-Party Claim) and 9.2 (Buyer's Indemnification for Third-Party Claim) of Full Requirements Service scheduled and received or delivered hereunder at the Delivery Point(s). Notwithstanding the foregoing, nothing contained in this Agreement is intended to create or increase liability of Buyer to any third party beyond such liability, if any, that would otherwise exist under the PJM Agreements or under applicable law if Buyer had not taken title.
- 4.6 PJM Settlement. For PJM settlement purposes only, the Seller's PJM obligations hereunder will settle at the Delmarva Power & Light Zone (PJM Pnode ID 51293).

- 4.7 Reliability Guidelines. Each Party agrees to adhere to the applicable operating policies, criteria and/or guidelines of the NERC, PJM, their successors, and any regional or sub regional requirements.
- 4.8 PJM Membership. For the period of time that this Agreement is in effect, Seller shall be: (i) a member in good standing of PJM; and (ii) qualified as a PJM "Market Buyer" and "Market Seller" pursuant to the PJM Agreements. For the period of time that this Agreement is in effect, Buyer shall be: (i) a member in good standing of PJM; and (ii) qualified as a PJM "Load Serving Entity" pursuant to the PJM Agreements.
- 4.9 Declaration of Authority. For the period of time that this Agreement is in effect, both Buyer and Seller shall have executed the Declaration of Authority in the form attached hereto as Exhibit I.
- 4.10 FERC Authorization. For the period of time that this Agreement is in effect, Seller shall have FERC authorization to make sales of energy, capacity and ancillary services at market based rates within PJM.
- 4.11 Disclosure in the Event of Seller Default. If Seller defaults and this Agreement is terminated pursuant to Article 12 (Events of Default; Remedies), Buyer may disclose the terms of this Agreement and any Transaction Confirmation to all other non-defaulting wholesale suppliers providing service to Buyer pursuant to the Delaware PSC Order and the PSC Settlement. Such disclosure by Buyer shall be made for the purpose of allowing each non-defaulting wholesale supplier to make its Step-Up elections described in Section 4.12 (Seller Step-Up Rights) below.
- 4.12 Seller Step-Up Rights. In the event of an early termination of a full requirements service agreement and associated transactions pursuant to Delaware PSC Orders and the PSC Settlement between Buyer and an entity other than Seller, Buyer shall send a written notification to Seller which: (i) describes the individual supply obligations associated with the terminated transaction(s) for the remaining term(s) of such transaction(s), including all available information regarding the associated CRRs; and (ii) notifies Seller of its option to supply its full or partial pro-rata share of the supply obligation associated with each terminated transaction for the remaining term(s) of the terminated transaction(s), without change to the pricing, terms and conditions of the terminated full requirements service agreement and transaction(s). Such an agreement to make additional supply available shall be termed a "Step-Up".

In the event that Seller wishes to exercise its option to Step-Up, Seller shall notify Buyer of such within five (5) Business Days of its receipt of Buyer's notification. In Seller's notification, Seller shall indicate: (i) the amount of the increased obligation that Seller wishes to take on in respect of certain specified

transaction(s) (which need not be all); and (ii) that it is willing to meet any additional collateral requirements related to the Step-Up. If other sellers do not exercise their option to Step-Up, Buyer shall again notify Seller as to the amount available for Step-Up and Seller will again have an option to take a full or partial pro-rata share of the amount that such other sellers declined to take. Seller's notification shall take place no later than two (2) Business Days of its receipt of Buyer's follow-up notification. Seller's pro-rata share, as described in this paragraph, shall be the ratio of Seller's total load obligation across all service types and customer classes at the time the Step-Up option is offered, stated on a Capacity PLC basis, to the total load being supplied under this Agreement and other full requirements service agreements pursuant to the Delaware PSC Orders and the PSC Settlement on a Capacity PLC basis, excluding the terminated transactions(s) and, if applicable, excluding the full requirement service agreements under which other sellers declined to exercise their Step-Up option in part or full.

For the avoidance of doubt, in the event that Seller does not respond to Buyer's Step-Up request within the relevant timeframe, Seller shall be deemed to have rejected the Buyer's request in full.

## **ARTICLE 5 TERM AND SURVIVAL**

- 5.1 Term. Unless otherwise agreed upon by Buyer and Seller, this Agreement shall continue in full force and effect from the Effective Date until the end of all Transaction(s) executed under this Agreement, unless this Agreement is terminated early pursuant to Article 12 of this Agreement.
- 5.2 Survival. All provisions of this Agreement which must, in order to give full force and effect to the rights and obligations of the Parties hereto, survive termination or expiration of this Agreement, shall so survive, including, without limitation, Articles 9, 10 and 12.

## **ARTICLE 6 DETERMINATION OF DELIVERED QUANTITIES**

- 6.1 Monthly Settlement Load. The amount of Monthly Settlement Load with respect to any calendar month during the Delivery Period shall be determined in terms of megawatt-hours (MWh) of Energy. The MWh of Energy shall be equivalent to the amount of Energy reported as the Seller's Specified Percentage obligation by Buyer to PJM, adjusted for losses to reflect retail meter load in accordance with Buyer's initial and subsequent retail load settlement processes.

- 6.2. Weekly Settlement Load. The amount of Weekly Settlement Load with respect to any Weekly Settlement Dates during the Delivery Period shall be determined in terms of megawatt-hours (MWh) of Energy. The MWh of Energy shall be equivalent to the amount of Energy reported as the Seller's Specified Percentage obligation by Buyer to PJM, adjusted for losses to reflect retail meter load in accordance with Buyer's initial retail load settlement processes.
- 6.3. Base Load and Increment Load Percentages. For R and Small C&I FP-SOS, the Base Load Percentage shall equal 100% and the Increment Load Percentage shall equal 0% for the entire term of this Agreement. For FP-SOS provided to MGS-S, LGS-S and GS-P customers, the Base Load Percentage and Increment Load Percentage shall be determined as set forth below.

(a) Base Load Percentage.

- i. Upon the date of execution of each Transaction for MGS-S, LGS-S and GS-P FP-SOS, Buyer shall determine the Capacity PLC, stated in megawatts, associated with each Bid Block in each Transaction ("Base PLC Per Bid Block"). Subsequent to the determination of the Base PLC Per Bid Block, and on each Business Day thereafter, Buyer shall determine the Capacity PLC, stated in megawatts, associated with each Bid Block in each Transaction ("PLC Per Bid Block"). The Base Load Percentage shall equal 100% if the PLC Per Bid Block is less than or equal to the Base PLC Per Bid Block plus five (5) megawatts. The Base Load Percentage shall equal the product of: (i) the quotient of the Base PLC Per Bid Block plus five (5) megawatts and the PLC Per Bid Block; and (ii) 100 if the PLC Per Bid Block is greater than the Base PLC Per Bid Block plus five (5) megawatts. On any Business Day when the PLC Per Bid Block is equal to or less than the Base PLC Per Bid Block minus three (3) megawatts, a new Base PLC Per Bid Block shall be established and shall equal the Base PLC Per Bid Block in effect the day prior to such event, minus three (3) megawatts for each whole multiple of three (3) megawatts that the PLC Per Bid Block is below the prior day Base PLC Per Bid Block. Such new Base PLC Per Bid Block shall replace the prior Base PLC Per Bid Block in all aspects of determining the Base Load Percentage subsequent to such new Base PLC Per Bid Block becoming effective.
- ii. At any time the Capacity PLCs are re-determined by the Buyer in accordance with the PJM Agreements, Buyer shall negate the effect of such re-determination on the PLC Per Bid Block. Accordingly, the daily determination of PLC Per Bid Block subsequent to each such PLC re-determination, shall equal the PLC per bid block computed by Buyer each day using the re-determined PLCs ("Unadjusted PLC Per Bid Block") minus the difference of: (i) Unadjusted PLC Per Bid Block computed by Buyer on the day such re-determined PLCs

become effective; and (ii) the PLC Per Bid Block determined on the day prior to the re-determined PLCs becoming effective. For further clarity, Exhibit H contains an example of the calculation described in this Section 6.2(a) (ii). On any Business Day, an increment is triggered when customers eligible to return to SOS have the effect that the PLC per Bid Block is greater than the Base PLC per Bid Block plus five (5) megawatts. Customers migrating from SOS to alternate suppliers or migrating from the service territory or whose electric service is terminated such that the PLC per Bid Block is equal to or less than the Base PLC per Bid Block minus (3) megawatts would trigger a decrement.

- (b) Increment Load Percentage. Seller shall not be responsible for supplying the Increment Load Percentage, which shall be equal to 100% minus the Base Load Percentage.

## ARTICLE 7 BILLING AND SETTLEMENT

- 7.1 Billing. Consistent with PJM settlement dates, Buyer shall deliver to Seller, via electronic transmission or other means agreed to by the Parties, an invoice ("Invoice") that sets forth the total amount due for the previous calendar month for all Transactions. The Invoice shall detail for each Transaction the following:

- (a) Monthly Settlement Base Load
- (b) Monthly Settlement Base Price
- (c) Monthly Settlement Amount
- (d) Weekly Settlement Base Load
- (e) Weekly Settlement Base Price
- (f) Weekly Settlement Amount
- (g) PJM billing adjustments
- (h) Any other adjustments set forth in this Agreement

- 7.2 PJM Billing.

- (a) Buyer and Seller shall direct PJM to invoice Seller and Buyer for charges and credits relating to Seller's and Buyer's rights and obligations under this Agreement as set forth in Exhibit D attached hereto and made a part hereof. If PJM is unable to invoice charges or credits in accordance with Exhibit D, Buyer shall rectify such PJM invoice discrepancy in the Invoice sent pursuant to Section 7.1 (Billing).

- (b) The Parties agree that the PJM bill may change from time to time. Allocation of any charges that are reflected in a PJM bill that are not included on or are inconsistent with Exhibit D will be determined pursuant to Sections 2.3 (Network Integration Transmission Service and Distribution Service), 2.4 (Other Changes in PJM Charges), and 16.11 (PJM Agreement Modifications) of this Agreement.

7.3 Payment of the Invoice. On the PJM Settlement Dates, Buyer will pay to Seller, or Seller will pay to the Buyer, as the case may be, the total amount due in the applicable Invoice. All payments shall be made by "Electronic Funds Transfer" (EFT) via "Automated Clearing House" (ACH), to a bank designated in writing by such Party, by 12:00 p.m. EPT on the Weekly Settlement Date and the Monthly Settlement Date. Payment of Invoices shall not relieve the paying Party from any other responsibilities or obligations it has under this Agreement (other than the obligation to make such payment), nor shall such payment constitute a waiver of any claims arising hereunder.

7.4 Netting of Payments. Buyer and Seller shall discharge mutual debts and payment obligations due and owing to each other under this Agreement, as of the Weekly Settlement Date and the Monthly Settlement Date, such that all amounts owed by each Party to the other Party shall be reflected in a single amount due to be paid by the Party who owes it and received by the other Party, provided that the calculation of the net amount shall not include any disputed amounts being withheld pursuant to Section 7.5 (Billing Disputes and Adjustment of Invoices).

7.5 Billing Disputes and Adjustments of Invoices.

- (a) Consistent with the PJM rules as they may be revised in accordance with Settlement C, Buyer may, in good faith, adjust the Invoice to include revised load data or correct any errors. In the event Settlement C is not adopted by PJM, any adjustment to include revised load data or to correct any errors must occur within 12 months from the date on which an Invoice is issued. The adjustment shall include interest calculated at the Interest Rate from the original due date to the date of payment. Buyer shall provide Seller a written explanation of the basis for the adjustment.
- (b) Within twelve (12) months of the date on which an Invoice is issued or an Invoice is adjusted pursuant to Section 7.5(a) (Billing Disputes and Adjustment of Invoices), or within the period established in Settlement C, whichever is shorter, Seller may, in good faith, dispute the correctness of such Invoice or adjustment, pursuant to the provisions of Article 13 (Dispute Resolution), and provided that Seller has paid by the Monthly Settlement Date any portion of an Invoice that is not disputed.
- (c) Within twelve (12) months of the date on which a PJM bill is issued, or within the period established in Settlement C, whichever is shorter, Buyer or Seller

may, in good faith, dispute the correctness of any such PJM bill, pursuant to the provisions of Article 13 (Dispute Resolution), and provided that the disputing Party has paid by the Monthly Settlement Date any portion of an Invoice that is not disputed.

- (d) A failure to raise a dispute applicable under subsections 7.5(a)-(c) within such 12 month period, or within the period established in Settlement C, whichever is shorter, shall be deemed to bar Buyer or Seller from raising such dispute as it applies between Buyer and Seller.

- 7.6 Interest on Unpaid Balances. Interest on delinquent amounts, other than amounts in dispute as described in Section 7.5 (Billing Disputes and Adjustment of Invoices), shall be calculated at the Interest Rate from the original due date to the date of payment.

## ARTICLE 8

### TAXES

- 8.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize taxes, so long as neither Party is materially adversely affected by such efforts.
- 8.2 Taxes.
  - (a) As between the Parties: (i) Seller is responsible for the payment of all taxes imposed by any Governmental Authority on the wholesale sales of Full Requirements Service under this Agreement; and (ii) Buyer is responsible for the payment of all taxes imposed by any Governmental Authority on retail sales of Full Requirements Service under this Agreement.
  - (b) Any Party paying taxes that should have been paid by the other Party pursuant to Section 8.2(a) (Taxes), shall be reimbursed by such other Party in the next invoice issued pursuant to Section 7.1 (Billing).
- 8.3 Disclosure of Tax Treatment. Notwithstanding anything to the contrary in this Agreement or in the RFP and appendices thereto, Seller and Buyer agree that (i) any obligation of confidentiality with respect to the Parties' Transactions hereunder does not apply, and has not applied from the commencement of discussions between the Parties, to the tax treatment and tax structure of the Agreement and all Transactions thereunder, and (ii) Seller and Buyer (and each of their respective employees, representatives, or agents) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Agreement and the Transactions thereunder, as well as any materials of any kind (including opinions or other tax analyses) that have been provided to the

disclosing Party relating to such tax treatment and tax structure, all within the meaning of Treasury Regulations Section 1.6011-4; provided, however, that the foregoing is not intended to affect any privileges that each Party is entitled, in its sole discretion, to maintain, including with respect to any confidential communications with its attorney or any confidential communications with a federally authorized tax practitioner under Section 7525 of the Internal Revenue Code.

## ARTICLE 9 INDEMNIFICATION

- 9.1 Seller's Indemnification for Third-Party Claims. Seller shall indemnify, hold harmless, and defend Buyer and its Affiliates, and their respective officers, directors, employees, agents, contractors, subcontractors, invitees, successors, representatives and permitted assigns (collectively, "Buyer's Indemnitees") from and against any and all claims, liabilities, costs, losses, damages, and expenses including reasonable attorney and expert fees, disbursements actually incurred, and any penalties or fines imposed by Government Authorities in any action or proceeding between Buyer and a third party for damage to property of unaffiliated third parties, injury to or death of any person, to the extent directly caused by the gross negligence or willful misconduct of Seller and/or its officers, directors, employees, agents, contractors, subcontractors or invitees arising out of or connected with Seller's performance under this Agreement, Seller's exercise of rights under this Agreement, or Seller's breach of this Agreement.
- 9.2 Buyer's Indemnification for Third-Party Claims. Buyer shall indemnify, hold harmless, and defend Seller and its Affiliates, and their respective officers, directors, employees, agents, contractors, subcontractors, invitees, successors, representatives and permitted assigns (collectively, "Seller's Indemnitees") from and against any and all claims, liabilities, costs, losses, damages, and expenses including reasonable attorney and expert fees, disbursements actually incurred, and any penalties or fines imposed by Government Authorities in any action or proceeding between Seller and a third party for damage to property of unaffiliated third parties, injury to or death of any person, to the extent directly caused by the gross negligence or willful misconduct of Buyer and/or its officers, directors, employees, agents, contractors, subcontractors or invitees arising out of or connected with Buyer's performance under this Agreement, Buyer's exercise of rights under this Agreement, or Buyer's breach of this Agreement.
- 9.3 Indemnification Procedures. If either Party intends to seek indemnification under Sections 9.1 (Seller's Indemnification for Third-Party Claims) or 9.2 (Buyers Indemnification for Third-Party Claims), as applicable, from the other Party, the Party seeking indemnification shall give the other Party notice of such claim within ninety (90) days of the later of the commencement of, or the Party's actual knowledge of, such claim or action. Such notice shall describe the claim in



reasonable detail, and shall indicate the amount, estimated if necessary, of the claim that has been, or may be, sustained by said Party. To the extent that the other Party will have been actually and materially prejudiced as a result of the failure to provide such notice, such notice will be a condition precedent to any liability of the other Party under the provisions for indemnification contained in this Agreement. Neither Party may settle or compromise any claim without the prior consent of the other Party; provided, however, said consent shall not be unreasonably withheld or delayed.

## ARTICLE 10 LIMITATIONS ON LIABILITY

- 10.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH IN THIS AGREEMENT, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE

DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

- 10.2 Limitation on Buyer Liability for Conduct of Consultant. As set forth in the PSC Settlement and Delaware PSC Orders, Buyer is obligated to share certain information with a consultant ("PSC Consultant") chosen and supervised by the Delaware PSC and its Staff. Notwithstanding anything set forth in this Agreement, in no event will Buyer have any liability of any kind with respect to Sellers for any conduct of the PSC Consultant, except to the extent of any remedy that Buyer actually recovers from the PSC Consultant.

## **ARTICLE 11 FORCE MAJEURE**

- 11.1 Force Majeure. Notwithstanding anything in this Agreement to the contrary, the Parties shall be excused from performing their respective obligations under this Agreement (other than the obligation to make payments with respect to performance prior to the event of Force Majeure) and shall not be liable for damages or otherwise due to their failure to perform, during any period that one Party is unable to perform due to an event of Force Majeure, provided that the Party declaring an event of Force Majeure shall: (i) act expeditiously to resume performance; (ii) exercise all commercially reasonable efforts to mitigate or limit damages to the other Party; and (iii) fulfill the requirements set forth in Section 11.2 (Notification).
- 11.2 Notification. A Party unable to perform under this Agreement due to an event of Force Majeure shall: (i) provide prompt written notice of such event of Force Majeure to the other Party, which shall include an estimate of the expected duration of the Party's inability to perform due to the event of Force Majeure; and (ii) provide prompt notice to the other Party when performance resumes.

## **ARTICLE 12 EVENTS OF DEFAULT; REMEDIES**

- 12.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within two (2) Business Days after written notice;

- (b) any representation or warranty made by such Party herein or in response to the RFP is false or misleading in any material respect when made or when deemed made or repeated;
- (c) the failure of a Party to comply with the requirements of Section 4.8 (PJM Membership) and 4.10 (FERC Authorization) if such failure is not remedied within three (3) Business Days after written notice, provided, however, that if such failure can be rectified and the Seller is in the process of rectifying the failure, then the Event of Default shall be tolled for up to thirty (30) days;
- (d) PJM has declared a Party to be in default of any provision of any PJM Agreement, which default prevents a Party's performance hereunder if such failure is not remedied within three (3) Business Days after written notice;
- (e) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied within three (3) Business Days after written notice;
- (f) such Party becomes Bankrupt;
- (g) such Party consolidates with, or merges with or into, or transfers all or substantially all of its assets to, another entity, or assigns the Agreement or any rights, interests, or obligations hereunder without the prior written consent of the other Party when such consent is required, and, at the time of such consolidation, merger, transfer or assign, the resulting, surviving, transferee, or assigned entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (h) the occurrence and continuation of: (i) a default, event of default or other similar condition or event in respect of such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than five percent (5%) of such Party's TNW, which results in such indebtedness becoming immediately due and payable or; (ii) a default by such Party in making on the due date therefore one or more payments, individually or collectively, in an aggregate amount of not less than five percent (5%) of such Party's TNW.
- (i) the failure of a Party to comply with its obligations pursuant to Article 14 (Performance Assurance/Accelerated Payments) if such failure is not remedied within three (3) Business Days after written notice.
- (j) with respect to Seller's Guarantor if any:
  - i. if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
  - ii. the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;

- iii. the failure of the Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under this Agreement without the written consent of the other Party;
- iv. the Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any guaranty; or
- v. conditions described with respect to a Party in subparagraph (f) of this Section 12.1 (Events of Default) occurs with respect to its Guarantor.

12.2 Remedies. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party"), shall provide written notice to the Defaulting Party and shall have the right to temporarily suspend performance pursuant to Section 12.2(a) or implement all remedies pursuant to Section 12.2(b):

(a) If an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right to suspend performance, provided that such suspension shall not continue for longer than ten (10) Business Days. At any time during or subsequent to the temporary suspension of performance, the Non-Defaulting Party may proceed with the steps outlined in Section 12.2(b). If, by the end of the ten (10) Business Day period of suspension, the Non-Defaulting Party has not commenced the implementation of the remedies pursuant to Section 12.2(b), then the Non-Defaulting Party must resume performance of its obligations under this Agreement.

(b) In addition to any other remedies available at law or in equity to the Non-Defaulting Party, if an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right to implement all, but not less than all, the following remedies:

- i. Suspend performance and designate a day, in such notice, no earlier than the day such notice is effective and no later than twenty (20) (calendar) days after such notice is effective, as an early termination date ("Early Termination Date") for the purposes of determining the Settlement Amount;
- ii. calculate and receive from the Defaulting Party, payment for any Default Damages the Non-Defaulting Party incurs as of the date of the event giving rise to the Event of Default, until the earlier of: (i) the Early Termination Date (if applicable); or (ii) the Event of Default has been cured by the Defaulting Party; or (iii) the Non-Defaulting Party waives such Event of Default; and
- iii. withhold any payments due to the Defaulting Party under this Agreement as an offset to any Default Damages or Termination Payment, as defined in Section 12.3 (Calculation and Net Out of Settlement Amounts).

(c) If an Event of Default has occurred and the Non-Defaulting Party is the Buyer, then:

- i. unless the Event of Default was a failure by Seller to meet any or all of its Full Requirements Service obligations, Buyer may offer to waive the default on such terms and conditions as Buyer, at its sole discretion, may deem appropriate to propose ("Special Remedy"); provided however that;
- ii. any such Special Remedy can only be offered to Seller if it first is specifically approved by the Delaware PSC in accordance with PSC Settlement.

### 12.3 Calculation and Net Out of Settlement Amounts.

(a) The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable. For purposes of calculating the Settlement Amount, the Non-Defaulting Party shall reflect the net impact of the exercise of the option on the part of other wholesale suppliers as described in Section 4.12 (Seller Step-Up Rights) of this Agreement. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single liquidated amount (the "Termination Payment") by netting out: (i) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article 14 (Performance Assurance/Accelerated Payments), plus any or all other amounts due to the Defaulting Party under this Agreement; against (ii) all Settlement Amounts that are due to the Non-Defaulting Party plus any or all other amounts due to the Non-Defaulting Party, including but not limited to Default Damages, under this Agreement. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate. When the Buyer is the Non-Defaulting Party and replaces Seller's full requirements obligation under this Agreement through mechanisms specified in the PSC Settlement, the result of that procedure will be deemed to be commercially reasonable for purposes of calculating the Settlement Amount.

- ☐ Seller may, in its sole discretion, add subsection 12.3(b) included in Exhibit J by checking this box. If Seller does not check this box, subsection 12.3(b) will not be included as part of the Parties' Agreement.

- 12.4 Notice of Termination Payment. As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide written notice to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The owing Party shall make the Termination Payment within five (5) Business Days after such notice is effective.
- 12.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a notice that it intends to dispute the calculation of the Termination Payment ("Termination Payment Dispute Notice"), pursuant to the provisions of Article 13 (Dispute Resolution), and provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer collateral to the Non-Defaulting Party in an amount equal to the Termination Payment, such collateral to be in a form acceptable to the Non-Defaulting Party by the Termination Payment Date.
- 12.6 Closeout Setoffs. After calculation of a Termination Payment in accordance with Section 12.3, (Calculation and Net Out of Settlement Amounts) if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to: (i) set off against such Termination Payment any amounts payable by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party; and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 12.2 (a), withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Article shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise). If any obligation is unascertained, the Non-Defaulting Party may in good faith estimate that obligation and set-off in respect of the estimate, subject to the Non-Defaulting Party accounting to the Defaulting Party when the obligation is ascertained.
- 12.7 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's failure to perform pursuant to this Agreement.

## **ARTICLE 13**

### **DISPUTE RESOLUTION**

- 13.1 Informal Dispute Resolution. Before pursuing resolution of any dispute arising out of this Agreement, the disputing Party shall provide written notice to the other Party setting forth the nature of the dispute, the amount involved, if any, and the remedies sought. The Parties shall use good faith and reasonable commercial efforts to informally resolve such dispute. Such efforts shall last for a period of at least thirty (30) calendar days from the date that the notice of the dispute is first delivered from one Party to the other Party. Any amounts that are owed by one Party to the other Party as a result of resolution of a dispute pursuant to this Section 13.1 (Informal Dispute Resolution), shall be paid within two (2) Business Days of such resolution and the payment shall include interest calculated at the Interest Rate from the original due date through the date of payment.
- 13.2 Formal Dispute Resolution. After the requirements of Section 13.1 (Informal Dispute Resolution) have been satisfied, all disputes, except as noted below, between the Parties shall be submitted to the appropriate authority. Notwithstanding anything set forth in this Article 13 (Dispute Resolution), any dispute concerning an increase in the Renewable Energy Resource requirement described in Section 4.4 (Renewable Energy Resource Requirement) will be resolved in accordance with the procedures set forth in Section 4.4 (Renewable Energy Resource Requirement), and any dispute concerning new PJM charges will be resolved in accordance with the procedures set forth in Section 2.4 (Other Changes in PJM Charges).

## **ARTICLE 14**

### **PERFORMANCE ASSURANCE/ACCELERATED PAYMENTS**

- 14.1 Requirement for Performance Assurance. With respect to Aggregate Transactions, if at any time and from time to time during the term of this Agreement, Aggregate Buyer's Exposure exceeds the Unsecured Credit on any Business Day, then Buyer shall request that Seller post Performance Assurance in an amount equal to the amount by which Aggregate Buyer's Exposure exceeds the Unsecured Credit (rounding upwards to the nearest \$100,000), less any Performance Assurance already posted with Buyer. Notwithstanding the above, Seller shall only be required to post the required Performance Assurance to the extent the amount of required Performance Assurance is equal to or greater than \$500,000. Subsequent and incremental requests for Performance Assurance shall be in \$100,000 increments. Buyer's request for Performance Assurance shall not be disputed by Seller.
- 14.2 Performance Assurance Transfers/Returns. If the request for Performance Assurance is made by Buyer before 1:00 p.m. EPT on a Business Day, then if

Seller is posting cash as the form of Performance Assurance Collateral, Seller shall be required to deliver the Performance Assurance cash to Buyer on the Business Day following the date of such request; and if Seller is posting a Letter of Credit or other security as acceptable to Buyer as the form of Performance Assurance collateral, Seller shall be required to deliver the Performance Assurance Letter of Credit or other security on the second Business Day following the date of such request. If a request for Performance Assurance is made by Buyer at or after 1:00 p.m. EPT, then if Seller is posting cash as the form of Performance Assurance collateral, Seller shall be required to deliver the Performance Assurance cash to Buyer on the second Business Day following the date of such request; and if Seller is posting a Letter of Credit or other security as acceptable to Buyer as the form of Performance Assurance collateral, Seller shall be required to deliver the Performance Assurance Letter of Credit or other security on the third Business Day following the date of such request. Telephone, facsimile, or other communication means mutually acceptable by the Parties, are suitable means for the Buyer to make requests for Performance Assurance. If Seller provides its Performance Assurance collateral in cash, in whole or in part, Seller will also simultaneously grant Buyer a first-priority security interest in that cash, in a form mutually acceptable to Buyer and Seller. Buyer shall not be entitled to hold Performance Assurance in the form of cash; rather, Performance Assurance in the form of cash shall be held in any major U.S. commercial bank, or a foreign bank with a U. S. branch office, (which is not the Buyer or an affiliate of the Buyer), and has assets of at least \$10 billion and a credit rating of at least "A" by Standard and Poor's, or "A2" by Moody's Investor Services ("Qualified Institution"). The Buyer will pay to Seller on the first Business Day of each calendar quarter the amount of interest it receives based upon the applicable overnight repurchase interest rate from the Qualified Institution on any Performance Assurance in the form of cash posted by Seller. The interest amount or portion thereof not returned to Seller pursuant to this Section 14.2 will constitute Performance Assurance and will be subject to the provisions of Article 14 of this Agreement.

On any Business Day (but no more frequently than weekly with respect to Letters of Credit or other security acceptable to Buyer, and daily with respect to cash), Seller, at its sole cost, may request that the Performance Assurance be reduced correspondingly to reflect the decrease in Buyer's Exposure or an increase in Seller's Unsecured Credit, if any (rounding upwards for any fractional amount to the nearest \$100,000). Buyer shall be required to return the amount of Performance Assurance due in accordance with the timeframes set forth in the preceding paragraph. Telephone, facsimile, or other communication means mutually acceptable by the Parties, are suitable means for the Seller to make requests for return of Performance Assurance.

In the event that Seller fails to provide Performance Assurance or Buyer fails to return Performance Assurance pursuant to the terms of this Article 14 (Performance Assurance/Accelerated Payments) within the applicable



timeframes, then an Event of Default pursuant to Section 12.1(i) shall be deemed to have occurred with respect to the non-performing Party and the other Party will be entitled to the remedies set forth therein.

In instances caused by the timing of the requests for both the return of Performance Assurance and placement of Performance Assurance, a situation may arise where the Parties are both sending and receiving transactions on the same day. In these instances, the Parties may net the requested amounts and proceed with only one transaction. Netting is only permitted for Performance Assurance purposes if it is mutually agreed to by both Parties in advance and confirmed in advance.

- 14.3 Unsecured Credit. During the term of this Agreement, Buyer shall extend, solely with respect to the Performance Assurance set forth in Section 14.1 (Requirement for Performance Assurance), Unsecured Credit to Seller in an amount initially determined on the Effective Date and redetermined each Business Day thereafter pursuant to this Section 14.3.

The relevant Unsecured Credit Cap shall be the Unsecured Credit Cap listed in the following table that corresponds to Seller's (or Seller's Guarantor's) lowest Credit Rating most recently published by S&P, Fitch and/or Moody's. The relevant TNW Amount shall be calculated using the TNW Percentage listed in the following table that corresponds to Seller's (or Seller's Guarantor's) lowest Credit Rating most recently published by S&P, Fitch and/or Moody's.

<u>Credit Rating</u>				
<u>S&amp;P</u>	<u>Fitch</u>	<u>Moody's</u>	<u>TNW Percentage</u>	<u>Unsecured Credit Cap</u>
A or above	A or above	A2 or above	15%	\$125,000,000
A-	A-	A3	10%	\$100,000,000
BBB+	BBB+	Baa1	8%	\$75,000,000
BBB	BBB	Baa2	6%	\$50,000,000
BBB-	BBB-	Baa3	4%	\$25,000,000
BB+	BB+	Ba1	2%	\$15,000,000
BB	BB	Ba2	1%	\$10,000,000
BB-	BB-	Ba3	0.5%	\$5,000,000
Below BB-	Below BB-	Below Ba3	0%	\$0.00

- 14.4 Credit Rating. If during the term of the Agreement, Seller's or Seller's Guarantor's Credit Rating changes, by either being upgraded or downgraded by any of the rating agencies referenced in Section 14.3 (Unsecured Credit) of the

Agreement, the Seller shall be required to provide written notice to Buyer of such Credit Rating change no later than two (2) Business Days after the date of such change. However, if Seller's, or Seller's Guarantor's, equity is publicly traded on the New York Stock Exchange, NASDAQ National Market, or American Stock Exchange, the Buyer will waive the requirement to provide written notice.

14.5 Tangible Net Worth. During the term of the Agreement, Seller, or Seller's Guarantor, shall be required to provide Buyer written financial information to determine the Seller's, or Seller's Guarantor's Tangible Net Worth. Financial information shall include an audited Annual Report, containing, but not limited to, a balance sheet prepared in accordance with generally accepted accounting principles, a schedule of long term debt including maturity dates, and all notes to the financial statement that apply to long term debt, short term borrowing, and liquidity and capital resources. The Seller, or Seller's Guarantor, shall also provide the Buyer written financial information on a quarterly basis containing a balance sheet prepared in accordance with generally accepted accounting principles. However, if Seller's, or Seller's Guarantor's, equity is publicly traded on the New York Stock Exchange, NASDAQ National Market, or American Stock Exchange, the Buyer will waive the requirement to provide written financial information.

14.6 Foreign Entities. The following standards shall apply to Seller, or Seller's Guarantor, that have not been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia and whose financial data is not denominated in United States currency and does not conform to generally accepted accounting principles (GAAP) in the United States. For Sellers who cannot meet the following requirements, the posting of cash or letter of credit in an acceptable form (see standard format in Exhibit C) for the Aggregate Buyer's Exposure shall be required.

- (a) The Seller shall supply such evidence of creditworthiness so as to provide Buyer with comparable assurances of creditworthiness as is applicable above for Sellers that have been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia. The Buyer shall have full discretion, without liability or recourse to the Seller, to evaluate the evidence of creditworthiness submitted by such Seller; or
- (b) The Guarantor of a Seller shall supply such evidence of creditworthiness so as to provide Buyer with comparable assurances of creditworthiness as is applicable above for Guarantors of Sellers that have been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia. Buyer shall have full discretion, without liability or recourse to the Guarantor or the Seller, to evaluate the evidence of creditworthiness submitted by such Guarantor.

All Sellers or Guarantors of Sellers that have not been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia and whose financial data is not denominated in United States currency and does not conform to generally accepted accounting principles (GAAP) in the United States shall, in addition to all documentation required elsewhere in this Section 14.6 (Foreign Entities), supply the following as a condition of being granted Unsecured Credit, up to a maximum level, for the purpose of covering the Aggregate Buyer's Exposure:

(i) For Seller:

- (a) A legal opinion of counsel qualified to practice in the foreign jurisdiction in which the Seller is incorporated or otherwise formed that this Agreement is, or upon the completion of execution formalities will become, the binding obligation of the Seller in the jurisdiction in which it has been incorporated or otherwise formed; and
- (b) The sworn certificate of the corporate secretary (or similar officer) of such Seller that the person executing this Agreement on behalf of the Seller has the authority to execute the Agreement and that the governing board of such Seller has approved the execution of this Agreement; and
- (c) The sworn certificate of the corporate secretary (or similar officer) of such Seller that the Seller has been authorized by its governing board to enter into agreements of the same type as this Agreement.

Buyer shall have full discretion, without liability or obligation to the Seller, to evaluate the sufficiency of the documents submitted by the Seller.

(ii) For Guarantor of a Seller:

- (a) A legal opinion of counsel qualified to practice in the foreign jurisdiction in which the Guarantor is incorporated or otherwise formed that this Guaranty is, or upon the completion of execution formalities will become, the binding obligation of the Guarantor in the jurisdiction in which it has been incorporated or otherwise formed; and
- (b) The sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the person executing the Guaranty on behalf of the Guarantor has the authority to execute the Guaranty and that the governing board of such Guarantor has approved the execution of the Guaranty; and
- (c) The sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the Guarantor has been authorized by its governing board to enter into agreements of the same type as the Guaranty.

Buyer shall have full discretion, without liability or obligation to the Guarantor or the Seller, to evaluate the sufficiency of the documents submitted by such Guarantor.

- 14.7 Aggregate Buyer's Exposure. In order to determine the amount of Performance Assurance during the term of this Agreement, Buyer shall calculate the Aggregate Buyer's Exposure under Aggregate Transactions once per Business Day, pursuant to the process and methodology described in Exhibit E for calculating the mark-to-mark exposure. On a Transaction Date, the Buyer's Exposure for that Transaction shall be deemed equal to zero.

To the extent that the calculations of the Aggregate Buyer's Exposure for a given date results in a negative number, the Aggregate Buyer's Exposure for such date shall be deemed equal to zero.

- (a) Pricing Agent. Buyer shall contract with and pay for the services of a single independent consultant to provide pricing services with respect to the Transactions under this Agreement. The Pricing Agent shall provide to the Buyer the On-Peak Initial Mark Price and the Off-Peak Initial Mark Price. In addition, on each Business Day, the Pricing Agent shall provide to the Buyer the On-Peak Forward Price and the Off-Peak Forward Price. To the extent that information and/or quotes are not available to determine an On-Peak Forward Price or Off-Peak Forward Price for a given month the Pricing Agent shall be permitted to use information and/or quotes relevant to such month for which information and/or quotes are available in order to provide the Buyer the required On-Peak Forward Price and Off-Peak Forward Price for such month. Exhibit E presents in more detail the methodology to be used by the Pricing Agent in determining the Off-Peak Initial Mark Price, On-Peak Initial Mark Price, the On-Peak Forward Price and the Off-Peak Forward Price.
- (b) Buyer shall use reasonable efforts to provide Seller with Aggregate Buyer's Exposure on each Business Day subject to the Confidentiality provisions of this Agreement.
- (c) Pursuant to Section 14.1 above, Seller shall not dispute any request by Buyer for Performance Assurance. Notwithstanding such provision, Seller may dispute the Pricing Agent's determinations of the On-Peak Initial Mark Price, Off-Peak Initial Mark Price, On-peak Forward Price and Off-Peak Forward Price if Seller can demonstrate that the Pricing Agent has been grossly negligent or has exhibited willful misconduct in such determinations, or that the Pricing Agent is making such determinations in a manner that is arbitrary, capricious or erroneous on its face. Such dispute of the Pricing Agent's determinations by the Seller shall not be cause for any delay by the Seller in posting any Performance Assurance requested by the Buyer.

## ARTICLE 15

### REPRESENTATIONS AND WARRANTIES

- 15.1 Representations and Warranties. On the Effective Date and throughout the term of this Agreement, each Party represents and warrants to the other Party that:
- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
  - (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and each Transaction;
  - (c) the execution, delivery and performance of this Agreement and each Transaction are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
  - (d) this Agreement and each Transaction constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses;
  - (e) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
  - (f) there are no pending, or to its knowledge threatened, actions, suits or proceedings against it or any of its Affiliates any legal proceedings before any court or Governmental Authority that could materially adversely affect its ability to perform its obligations under this Agreement and each Transaction;
  - (g) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement and each Transaction;
  - (h) with respect to Buyer, it is acting to fulfill its obligations under and in accordance with Delaware PSC Orders issued pursuant to Docket No. 04-391 to enter into this Agreement;
  - (i) it is not relying upon the advice or recommendations of the other Party in entering into this Agreement, it is capable of understanding, understands and accepts the terms, conditions and risks of this Agreement and each Transaction, and the other Party is not acting as a fiduciary for or advisor to it in respect of this Agreement;
  - (j) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code;
  - (k) it has entered into this Agreement and each Transaction in connection with the conduct of its business and it has the capacity or ability to provide or take delivery of the Full Requirements Service; and it is an "eligible contract participant" as defined in Section 1a(12) of the Commodity Exchange Act.
- 15.2 Additional Understandings. This Agreement is for the purchase and sale of Full Requirements Service that will be delivered in quantities expected to be used or

sold over a defined period(s) in the normal course of business, and it is the intention at the inception and throughout the term of this Agreement and each Transaction hereunder that the Agreement will result in physical delivery and not financial settlement, and the quantity of Full Requirements Service that Seller must deliver and Buyer must receive will be determined by the requirements of the SOS Load served by Buyer, and, as such, the Agreement does not provide for an option by either Party with respect to the quantity of Full Requirements Service to be delivered or received during performance of the Agreement. This Agreement has been drafted to effectuate Buyer's and Seller's specific intent so that in accordance with Financial Accounting Standards Board Statement No. 133 ("FAS 133"), as amended, Buyer would be able to elect to use accrual accounting for its purchases under this Agreement, while Seller would be able to elect to use either accrual or mark-to-market accounting for its sales under the Agreement. If either Buyer or Seller determines, in good faith, that the intended accounting treatment has become jeopardized, due to a change in interpretations of FAS 133, as amended, or otherwise, then Buyer and Seller agree to meet and use their best efforts to reform the Agreement so that, with the minimum changes possible, the Agreement again qualifies for the intended accounting treatments.

## ARTICLE 16 MISCELLANEOUS

- 16.1 Notices. Unless otherwise specified herein, all notices shall be in writing and delivered by hand, overnight or facsimile (provided a copy is also sent by overnight mail). Notice shall be effective on the next Business Day after it is sent. A Party may change its address by providing notice of the same in accordance with this Section 16.1. Notice information for Buyer and Seller is shown on Exhibit G.
- 16.2 General. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party other than a permitted successor or assignee bound to this Agreement or any Transaction. Any provision declared or rendered unlawful will not otherwise affect the remaining lawful obligations that arise under this Agreement or any Transaction; provided that in such event the Parties shall use commercially reasonable efforts to amend this Agreement or any Transaction in order to give effect to the original intention of the Parties.
- 16.3 Rules of Interpretation. The following principles shall be observed in the interpretation and construction of this Agreement:

- (a) unless otherwise stated, the terms "include" and "including" when used in this Agreement shall be interpreted to mean by way of example only and shall not be considered limiting in any way;
- (b) all titles and headings used herein are for convenience and reference purposes only, do not constitute a part of this Agreement and shall be ignored in construing or interpreting the obligations of the parties under this Agreement;
- (c) references to the singular include the plural and vice versa;
- (d) references to Articles, Sections, Clauses and the Preamble are, unless the context indicates otherwise, references to Articles, Sections, Clauses and the Preamble of this Agreement;
- (e) in carrying out its rights, obligations and duties under this Agreement, each Party shall have an obligation of good faith and fair dealing.

16.4 Audit. Each Party has the right on at least three (3) Business Days prior written notice, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made in accordance with Sections 7.1 (Billing) and 7.6 (Interest on Unpaid Balances).

16.5 Confidentiality.

- (a) Each Party shall hold in confidence and not release or disclose any document or information furnished by the other Party in connection with this Agreement, unless: (i) compelled to disclose such document or information by judicial, regulatory or administrative process or other provisions of law; (ii) such document or information is generally available to the public; (iii) such document or information was available to the receiving Party on a non-confidential basis; or (iv) such document or information was available to the receiving Party on a non-confidential basis from a third-party, provided that the receiving Party does not know, and, by reasonable effort, could not know that such third-party is prohibited from transmitting the document or information to the receiving Party by a contractual, legal or fiduciary obligation.
- (b) Notwithstanding any other provision of this Section 16.5, a Party may disclose whatever information is required by the FERC to disclose in connection with the filing of quarterly or annual reports and may make such disclosure without notification to any other Party.
- (c) Notwithstanding any other provision of this Section 16.5, a Party may disclose to its employees, representatives and agents all documents and information furnished by the other Party in connection with this Agreement, provided that such employees, representatives and agents have been advised of the confidentiality provisions of this Section 16.5, and further provided that in no event shall a document or information be disclosed in violation of the standard of conduct requirements established by FERC.

- (d) A Party receiving notice or otherwise concluding that any confidential document or information furnished by the other Party in connection with this Agreement is being sought under any provision of law, to the extent it is permitted to do so under any applicable law, shall: (i) promptly notify the other Party; and (ii) use reasonable efforts in cooperation with the other Party to seek confidential treatment of such confidential information.
  - (e) Any independent auditor performing an audit on behalf of a Party pursuant to Section 16.4 shall be required to execute a confidentiality agreement with the Party being audited. Such audit information shall be treated as confidential pursuant to this Section 16.5.
  - (f) The Parties agree that monetary damages may be inadequate to compensate a Party for the other Party's breach of its obligations under this Section 16.5. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the Party breaches or threatens to breach its obligations under this Section 16.5, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law.
- 16.6 Successors. This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.
- 16.7 Assignment/Change in Corporate Identity. Neither Party shall assign this Agreement, its rights or obligations hereunder without the prior written consent of the other Party, which consent may not be unreasonably withheld; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder),
- (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements,
  - (b) transfer or assign this Agreement to an affiliate of such Party if: (i) such affiliates creditworthiness is equal to or higher than that of such Party; or (ii) in the case of the Seller, where such affiliate's creditworthiness is not equal to or higher than that of such Party, such affiliate provides the Performance Assurance required pursuant to this Agreement,
  - (c) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose: (i) creditworthiness is equal to or higher than that of such Party; or (ii) in the case of the Seller, where such entity's creditworthiness is not equal to or higher than that of such Party, such entity provides the Performance Assurance required pursuant to this Agreement;



(d) provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

16.8 Governing Law. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTITUTED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

16.9 Jurisdiction and Venue. Except as provided in Sections 2.4 (Other Changes in PJM Charges) and 4.4 (Renewable Energy Resource Requirement), and except for matters jurisdictional to FERC, the Delaware PSC or the appellate courts having jurisdiction over the Delaware PSC or FERC matters, all disputes hereunder shall be resolved in the Federal or State courts of Delaware and each Party hereby irrevocably submits to the in personam jurisdiction of such courts. Each Party hereby waives its respective rights to any jury trial with respect to any litigation arising under or in connection with this Agreement.

16.10 Amendments. Except as provided in Section 16.11 (PJM Agreement Modifications), this Agreement or any Transaction shall not be amended, modified, terminated, discharged or supplemented, nor any provision hereof waived, unless mutually agreed, in writing, by the Parties. Except as provided in Section 16.11 (PJM Agreement Modifications), the rates, terms and conditions contained in this Agreement or any Transaction are not subject to change under Sections 205 or 206 of the Federal Power Act absent the mutual written agreement of the Parties. Absent the agreement of all parties to the proposed change, the standard of review for changes to this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U. S. 348 (1956) (the "Mobile-Sierra" doctrine).

16.11 PJM Agreement Modifications.

(a) If the PJM Agreements are amended or modified so that any schedule or section references herein to such agreements is changed, such schedule or section references herein shall be deemed to automatically (and without any further action by the Parties) refer to the new or successive schedule or section in the PJM Agreements which replaces that originally referred to in this Agreement.

(b) If the applicable provisions of the PJM Agreements referenced herein, or any other PJM rules relating to the implementation of this Agreement, are changed materially from those in effect on the Effective Date, both Parties shall cooperate to make conforming changes to this Agreement to fulfill the

purposes of this Agreement; provided that no such changes shall alter the economic benefits of this Agreement between the Parties.

- 16.12 Delay and Waiver. Except as otherwise provided in this Agreement, no delay or omission to exercise any right, power or remedy accruing to the respective Parties hereto upon any breach or default of any other Party under this Agreement shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character of any breach or default under this Agreement, or any waiver of any provision or condition of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing.
- 16.13 Regulatory Approvals. The commencement of the Delivery Period is subject to:  
 (i) the receipt or waiver by Seller of all Seller required regulatory approvals; and  
 (ii) the receipt or waiver by Buyer of all Buyer required regulatory approvals. In the event such required regulatory approvals are not received or waived, the Step-Up provisions of Section 4.12 (Seller Step-Up Rights) shall apply.

IN WITNESS WHEREOF, this Agreement is executed by the respective Parties on the dates set forth below and shall be effective as of the date first set forth in the Transaction Confirmation.

**Seller**

**Buyer**

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**EXHIBIT A**

Tag No. \_\_\_\_\_

**Transaction Confirmation**  
**(Sample Data)**

This Transaction Confirmation letter is being provided pursuant to and in accordance with the "Full Requirements Service Agreement" dated November 30, 2009 (the "Agreement") between Buyer and Seller. Terms used but not defined herein shall have the meanings ascribed to them in the Agreement. This Transaction Confirmation shall confirm the following terms of the transaction ("Transaction") agreed to on December 2, 2009 ("Transaction Date").

Seller: Seller Company Name  
 Buyer: Delmarva Power  
 Product: Full Requirements Service  
 Customer Group: Residential and Small Commercial & Industrial  
 Delivery Point: PJM Control Area  
 Delivery Period: June 1, 2010 through May 31, 2013 (36-month)  
 Bid Blocks: 1  
 Specified Percentage: XX.XXXX%  
 Base PLC Per Bid Block (Used for determining when an Increment Load is triggered):

Medium General Service -Secondary	n/a
Large General Service -Secondary	n/a
General Service - Primary	n/a

Customer Group: Residential and Small Commercial & Industrial  
 Service Classifications: R, R-TOU, R-TOU-ND, R-TOU-SOP, SGS-ND, GS-SH, GS-WH, OL, ORL, X.

Delivery Period: June 1, 2010 through May 31, 2013

**Monthly Settlement Base Price:**

Summer Energy, \$/MWh	<u>\$XX.XX</u>
Winter Energy, \$/MWh	<u>\$XX.XX</u>

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
On-Peak Estimated Energy Quantity Per 50 MW Capacity PLC, MWh	14187	11261	10590	8148	8316	9924	12679	12655	8603	8191	7440	12653
Off-Peak Estimated Energy Quantity Per 50 MW Capacity PLC, MWh	17331	13722	10571	8203	9391	8977	12270	12263	8851	7617	10036	14898

Please confirm that the terms stated herein accurately reflect the agreement reached on the date above between Seller and Buyer by returning an executed copy of this Transaction Confirmation by facsimile to Buyer at 202-872-3329 in accordance with Section 2.8 - Transaction Confirmation of the Agreement. The signatories to this Transaction must have the authority to enter into this Transaction.

**EXHIBIT B**

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**EXHIBIT C**

**PERFORMANCE ASSURANCE LETTER OF CREDIT**

**{TO BE ISSUED ON THE LETTERHEAD OF THE ISSUING BANK}**

IRREVOCABLE LETTER OF CREDIT NO.

ISSUE DATE \_\_\_\_\_

EXPIRY DATE \_\_\_\_\_

APPLICANT

[NAME]

[ADDRESS]

BENEFICIARY

[NAME]

[ADDRESS]

CURRENCY      AMOUNT

USD      \*\*\*\*\*\$

WE HEREBY ISSUE IN YOUR FAVOR OUR IRREVOCABLE LETTER OF CREDIT NO: \_\_\_\_\_ FOR THE ACCOUNT OF \_\_\_\_\_ (APPLICANT) FOR AN AMOUNT OR AMOUNTS NOT TO EXCEED IN THE AGGREGATE US DOLLARS \_\_\_\_\_ AVAILABLE BY YOUR DRAFT(S) AT SIGHT ON THE BANK OF \_\_\_\_\_ ("ISSUER") \_\_\_\_\_ (ADDRESS), EFFECTIVE \_\_\_\_\_ AND EXPIRING AT OUR COUNTERS ON \_\_\_\_\_ OR ANY AUTOMATICALLY EXTENDED EXPIRY DATE, AS PROVIDED HEREIN. THIS LETTER OF CREDIT IS AVAILABLE IN ONE OR MORE DRAFTS UP TO THE AGGREGATE AMOUNT SET FORTH HEREIN.

THIS LETTER OF CREDIT IS PRESENTABLE AND PAYABLE AT OUR COUNTERS AND WE HEREBY ENGAGE WITH YOU THAT DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE HONORED ON PRESENTATION IF ACCOMPANIED BY THE REQUIRED DOCUMENTS PURSUANT TO THE TERMS OF THIS LETTER OF CREDIT.

THE BELOW MENTIONED DOCUMENT(S) MUST BE PRESENTED ON OR BEFORE THE EXPIRY DATE OF THIS INSTRUMENT IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT.

1. YOUR SIGNED AND DATED STATEMENT, READING AS FOLLOWS:

"THE AMOUNT FOR THIS DRAWING, USD (INSERT AMOUNT), BEING MADE UNDER THE BANK OF \_\_\_\_\_ (BANK) LETTER OF CREDIT NUMBER (INSERT LETTER OF CREDIT REFERENCE NUMBER), REPRESENTS AN AMOUNT DUE AND PAYABLE TO BENEFICIARY FROM APPLICANT FOR PERFORMANCE ASSURANCE RELATED TO THE DP&L DE FULL REQUIREMENTS SERVICE AGREEMENT(S) DATED BETWEEN \_\_\_\_\_ AND \_\_\_\_\_."

2. THIS ORIGINAL LETTER OF CREDIT AND ANY AMENDMENT(S).

IF PRESENTATION OF ANY DRAWING IS MADE ON A BUSINESS DAY (AS HEREIN DEFINED) AND SUCH PRESENTATION IS MADE ON OR BEFORE 11:00 A.M. NEW YORK TIME, ISSUER SHALL SATISFY SUCH DRAWING REQUEST ON THE NEXT BUSINESS DAY. IF THE DRAWING IS RECEIVED AFTER 11:00 A.M. NEW YORK TIME, ISSUER WILL SATISFY SUCH DRAWING REQUEST ON THE SECOND FOLLOWING BUSINESS DAY.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT WILL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR ONE YEAR FROM THE EXPIRATION DATE HEREOF, OR ANY FUTURE EXPIRATION DATE, UNLESS AT LEAST 90 DAYS PRIOR TO ANY EXPIRATION DATE WE NOTIFY YOU AT THE ABOVE ADDRESS BY REGISTERED MAIL OR HAND DELIVERED COURIER THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT RENEWED FOR ANY SUCH PERIOD.

THIS LETTER OF CREDIT MAY BE TERMINATED UPON BENEFICIARY'S RECEIPT OF FULL PAYMENT FROM THE APPLICANT AND ISSUER'S RECEIPT OF A WRITTEN RELEASE FROM THE BENEFICIARY RELEASING THE ISSUER FROM ITS OBLIGATIONS UNDER THIS LETTER OF CREDIT.

THE TERM "BUSINESS DAY" AS USED HEREIN MEANS ANY DAY OTHER THAN (I) A SATURDAY, (II) A SUNDAY, OR (III) A DAY ON WHICH BANKING INSTITUTIONS LOCATED IN THE CITY OF NEW YORK, NEW YORK ARE REQUIRED OR AUTHORIZED BY LAW TO BE CLOSED.

APPLICANT'S FILING OF A BANKRUPTCY, RECEIVERSHIP OR OTHER DEBTOR-RELIEF PETITION, AND/OR APPLICANT'S DISCHARGE THEREUNDER, SHALL IN NO WAY AFFECT THE LIABILITY OF [BANK] UNDER THIS LETTER OF CREDIT AND [BANK] SHALL ALWAYS REMAIN LIABLE TO [BENEFICIARY] FOR THE FULL AMOUNT OF APPLICANT'S OBLIGATIONS HEREIN TO [BENEFICIARY] NOT TO EXCEED THE AVAILABLE AMOUNT IN THIS LETTER OF CREDIT.

ADDITIONAL TERMS AND CONDITIONS:

1. ALL COMMISSIONS AND OTHER BANKING CHARGES WILL BE BORNE BY THE APPLICANT.
2. THIS LETTER OF CREDIT
  - ☐ MAY BE TRANSFERRED OR ASSIGNED.
  - ☐ MAY NOT BE TRANSFERRED OR ASSIGNED
 (PLEASE CHECK ONLY ONE BOX) .
3. THIS LETTER OF CREDIT IS IRREVOCABLE.
4. THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES (1998) OF THE INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590 ("ISP98") OR SUCH LATER REVISION(S) OF THE ISP AS MAY BE HEREAFTER ADOPTED. AS TO MATTERS NOT GOVERNED BY ISP98, THIS LETTER OF CREDIT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING, TO THE EXTENT NOT INCONSISTENT WITH ISP98, THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN THE STATE OF NEW YORK. THIS LETTER OF CREDIT MAY NOT BE AMENDED, CHANGED OR MODIFIED WITHOUT THE EXPRESS WRITTEN CONSENT OF THE BENEFICIARY AND THE ISSUER.
5. THE BENEFICIARY SHALL NOT BE DEEMED TO HAVE WAIVED ANY RIGHTS UNDER THIS LETTER OF CREDIT, UNLESS THE BENEFICIARY OR AN AUTHORIZED AGENT OF THE BENEFICIARY SHALL HAVE SIGNED A DATED WRITTEN WAIVER. NO SUCH WAIVER, UNLESS EXPRESSLY SO STATED THEREIN, SHALL BE EFFECTIVE AS TO ANY TRANSACTION THAT OCCURS SUBSEQUENT TO THE DATE OF THE WAIVER, NOR AS TO ANY CONTINUANCE OF A BREACH AFTER THE WAIVER.
6. A FAILURE TO MAKE ANY PARTIAL DRAWINGS AT ANY TIME SHALL NOT IMPAIR OR REDUCE THE AVAILABILTY OF THIS LETTER OF CREDIT IN ANY SUBSEQUENT PERIOD OR OUR OBLIGATION TO HONOR YOUR SUBSEQUENT DEMANDS FOR PAYMENT MADE IN ACCORDANCE WITH THE TERMS OF THIS LETTER OF CREDIT.

AUTHORIZED SIGNATURE: \_\_\_\_\_  
 TITLE: \_\_\_\_\_

PLEASE DIRECT ANY WRITTEN CORRESPONDENCE, INCLUDING DRAWING OR INQUIRIES TO:  
 [BANK NAME, ADDRESS AND PHONE NUMBER

**EXHIBIT D****SAMPLE PJM INVOICE****(APPLICABLE TO WEEKLY AND MONTHLY SETTLEMENT BILLING)****FINAL BILLING STATEMENT ISSUED ON: MM/DD/YYYY****FOR PERIOD: MM/DD/YYYY TO MM/DD/YYYY****OPERATING AGREEMENT OF PJM  
INTERCONNECTION, L.L.C.:**

	<b>Day- ahead</b>	<b>Balancing</b>	<b>Total</b>
<b>Charges:</b>			
Spot Market Energy	Seller	Seller	Seller
Transmission Congestion	Seller	Seller	Seller
Transmission Losses	Seller	Seller	Seller
Regulation			Seller
Inadvertent Interchange			Seller
Synchronized Reserve			Seller
Operating Reserves	Seller	Seller	Seller
Synchronous Condensing			Seller
PJM Customer Payment Defaults			Seller
Reconciliation for Spot Market			Seller
Reconciliation for Regulation			Seller
Reconciliation for Transmission Congestion			Seller
Reconciliation for Transmission Losses			Seller
Reconciliation for Synchronized Reserve			Seller
Financial Transmission Rights Auction			Seller
Meter Correction			Seller
Load Response Program			Seller
<b>Credits:</b>			
Transmission Losses			Seller
Reconciliation for Transmission Losses			Seller
Auction Revenue Rights			Seller



**FINAL BILLING STATEMENT ISSUED ON: MM/DD/YYYY**  
**FOR PERIOD: MM/DD/YYYY TO MM/DD/YYYY**

**PJM OPEN ACCESS TRANSMISSION TARIFF:**

	<b>Total</b>
<b>Charges:</b>	
PJM Scheduling, System Control and Dispatch Service	Seller
Transmission Owner Scheduling, System Control and Dispatch Service	Seller
Reactive Supply and Voltage Control from Generation Sources Service	Seller
Black Start Service	Seller
Network Integration Transmission Service	Buyer
North American Electric Reliability Corporation (NERC)	Seller
Network Transmission Service Offset Charges	Buyer
Firm Point-to-Point Transmission Service	Seller
Non-Firm Point-to-Point Transmission Service	Seller
Reliability First Corporation (RFC)	Seller
Expansion Cost Recovery	Buyer
Transmission Enhancement	Buyer
Reconciliation for PJM Scheduling, System Control and Dispatch Service	Seller
Reconciliation for Transmission Owner Scheduling, System Control and Dispatch Service	Seller
Locational Reliability	Seller
<b>Credits:</b>	
Non-Firm Point-to-Point Transmission Service	Buyer

**EXHIBIT E**  
**METHODOLOGY FOR CALCULATION OF MARK TO MARKET (MTM)**  
**EXPOSURE**

**Parameters**

In calculating the MtM Exposure for each Transaction, the following parameters are set on the Transaction Date:

1. On-Peak Initial Mark Price
2. Off-Peak/On-Peak Price Ratio
3. Off-Peak Initial Mark Price
4. On-Peak Estimated Energy Quantity Per 50 MW Capacity PLC for each of the twelve calendar months
5. Off-Peak Estimated Energy Quantity Per 50 MW Capacity PLC for each of the twelve calendar months
6. Number of awarded Bid Blocks

In calculating the MtM Exposure for each Transaction, the following parameters are set each Business Day subsequent to the Transaction Date:

- 1) On-Peak Forward Price
- 2) Off-Peak Forward Price
- 3) Current Capacity PLC Per Bid Block
- 4) On-Peak Estimated Energy Quantity
- 5) Off-Peak Estimated Energy Quantity

**Determination of On-Peak Forward Prices**

On each Business Day subsequent to the Transaction date, the Pricing Agent will contact four Reference Market-Makers to obtain bid and ask Energy price quotes for PJM Western Hub On-Peak Hours for each month of the Delivery Period. If a minimum of two quotes in a particular month is not available, then it is treated the same as if no quotes were available. For the Pricing Agent to include a monthly On-Peak Forward Price quote from a Reference Market-Maker, both bid and ask prices must be available. For any month for which there are no single month quotes, but for which there are two month, quarterly, or 12 month quotes available ("Aggregate Quotes"), the Price Agent shall disaggregate the Aggregate Quote into monthly components in the following manner. The most recently available single month quotes for the same calendar months contained in the Aggregate Quote shall be averaged. The percentage by which each single month price differs from average of the single month prices for the same time period of the Aggregate Quote will be applied to the Aggregate Quote to establish monthly prices for the like month of the Aggregate Quote, such that the average will be Aggregate Quote. In the event that quotes for one or more months of a multi-month block and for the entire multi-month block in aggregate are both available, but are

inconsistent with each other, the Pricing Agent will use the one that is most consistent with other available quotes. The following is an example of the process to be used for disaggregating Aggregate Quotes:

- a. Aggregate Quote only available for Jan-March = \$60/MWh
- b. Immediate Prior Calendar year quotes for Jan-Mar as follows:
  - January: \$42/MWh
  - February: \$45/MWh
  - March: \$40/MWh
- c. Calculations as follows:
  1. Calculate Average price in (b) = \$42.33/MWh
  2. Calculation monthly deviation from Average:
    - January: 99.2% ( $\$42/\$42.33$ )
    - February: 106.3%: ( $\$45/\$42.33$ )
    - March: 94.5%: ( $\$40/\$42.33$ )
  3. Disaggregate the Aggregate Quote by applying percentages from c.(2) to the available aggregate quote:
    - January: \$59.53 ( $\$60 \times 99.2\%$ )
    - February: \$63.78 ( $\$60 \times 106.3\%$ )
    - March: \$56.69 ( $\$60 \times 94.5\%$ )

To the extent that On-Peak Forward Price quotes are not available for a given month, either as single month price quotes or as an Aggregate Quote, the Pricing Agent shall establish price quotes as follows:

- a. If the day on which the Pricing Agent is attempting to secure price quotes for a given month follows at least five (5) days in which the Pricing Agent has secured price quotes for that month, then the price quote that the Pricing Agent shall report shall be the average of the most recent five (5) days' quotes for that month. For example:
  - On January 2, 3, 4, 5, and 6, the Pricing Agent secures quotes of \$40, \$42, \$44, \$42, and \$40/MWh for March 2007.
  - On January 7, no quotes for March 2007 are available.
  - For January 7, the Pricing Agent reports \$41.60/MWh as the applicable quote, since that is the average of the most recent five (5) days.
- b. If the Pricing Agent has been unable to secure at least five days of price quotes for a given month, then the Pricing Agent shall use the quote for that same month from the immediately prior calendar year.

- c. To the extent that On-Peak forward price quotes are not available for any forward month at the time the Pricing Agent is establishing the On-Peak Initial Mark Price, the Pricing Agent shall follow the steps outlined in this Exhibit.

Exhibit E  
Mark-to-Market Example Calculation for a Transaction

Necessary Information from a Transaction Confirmation:		
Delivery Period:	June 1, 2008 - May 31, 2009	
Bid Blocks:	1 (n)	
Estimated Quantity Per 50 MW Capacity PLC:		
	On-Peak MWh (k)	Off-Peak MWh (l)
Jan	11800	8300
Feb	13000	9100
Mar	9100	8400
Apr	7200	5000
May	8800	8200
Jun	12900	9000
Jul	15200	10900
Aug	18000	11200
Sep	9500	6700
Oct	8300	5800
Nov	9800	8800
Dec	10800	7800

Business Day on which Mtm is Calculated:	June 24, 2008
Current Capacity PLC Per Bid Block:	51.3 MW (m)
Percent of On-Peak Hours Remaining in Current Month:	19% (o)
Percent of Off-Peak Hours Remaining in Current Month:	21% (p)
Base Load Percentage:	100% (q)

Mtm Exposure Calculation										
	a	b	c=a*b	d	e=d*b	f=d-a	g=f-e	h=k*(m/50)*n*o*q	i=(l/m/50)*p*q	j=(f*i)+g*j
	On-Peak Initial Mark Price \$/MWh	Off-Peak/On-Peak Price Ratio	Off-Peak Initial Mark Price \$/MWh	On-Peak Forward Price \$/MWh	Off-Peak Forward Price \$/MWh	Change In On-Peak Price \$/MWh	Change In Off-Peak Price \$/MWh	On-Peak Estimated Energy Quantity MWh	Off-Peak Estimated Energy Quantity MWh	MM Exposure
Jun-08	45.63	0.49	22.36	46.78	22.92	1.15	0.56	2,521	1,924	\$ 3,983
Jul-08	58.25	0.43	25.06	60.21	25.89	1.96	0.84	15,596	10,876	\$ 39,733
Aug-08	58.25	0.47	27.38	59.42	27.93	1.17	0.55	16,416	11,491	\$ 25,526
Sep-08	38.45	0.53	19.32	37.85	20.06	1.40	0.74	9,747	6,874	\$ 18,746
Oct-08	34.58	0.54	18.67	36.87	19.91	2.29	1.24	8,516	5,951	\$ 26,860
Nov-08	34.58	0.59	20.40	37.12	21.90	2.54	1.50	10,055	7,079	\$ 36,148
Dec-08	34.58	0.61	21.09	35.89	21.89	1.31	0.80	11,183	7,798	\$ 20,881
Jan-09	40.58	0.76	30.84	43.56	33.11	2.98	2.28	12,107	8,516	\$ 55,365
Feb-09	40.58	0.77	31.25	42.89	33.03	2.31	1.78	13,338	9,337	\$ 47,418
Mar-09	38.18	0.68	24.80	38.11	25.91	1.93	1.31	9,337	6,566	\$ 26,637
Apr-09	38.18	0.57	20.82	38.41	21.89	2.23	1.27	7,387	5,130	\$ 22,994
May-09	37.65	0.53	19.95	39.25	20.80	1.60	0.85	9,029	6,361	\$ 19,840
										\$ 344,132

**EXHIBIT F****FORM OF GUARANTY**

THIS GUARANTY AGREEMENT (this "Guaranty") is made and entered into as of this \_\_\_\_ day of \_\_\_\_, by \_\_\_\_ (the "Guarantor"), with an address at \_\_\_\_, in favor of Delmarva Power & Light Company ("DP&L") (the "Creditor"), with an address at 701 Ninth Street NW, Washington DC 20068 in consideration of the DP&L Delaware Full Requirements Service Agreement(s) (the "FSA(s)") between DP&L and \_\_\_\_ (the "Supplier") dated \_\_\_\_, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged. Guarantor is the \_\_\_\_ of Supplier.

Whereas, Supplier \_\_\_\_ is an affiliate of \_\_\_\_, \_\_\_\_ will therefore benefit by Supplier entering into the FSA with Creditor and \_\_\_\_ desires Creditor to enter into the FSA with Supplier and to extend credit to Supplier thereunder. (May be revised if guarantor is not a parent or affiliate of supplier.)

1. Guaranty of Obligations.

- (a) The Guarantor hereby irrevocably and unconditionally guarantees, with effect from date hereof, the prompt and complete payment when due of all of Supplier's payment obligations under the FSA (to the extent such payment obligations exceed the amount of any Performance Assurance provided to the Creditor by Supplier as defined in and in accordance with the FSA), whether on scheduled payment dates, when due upon demand, upon declaration of termination or otherwise, in accordance with the terms of the FSA and giving effect to any applicable grace period, and, provided only that the Creditor is the prevailing party in any judicial suit, action or proceeding arising out of, resulting from, or in any way relating to this Guaranty, or if by mutual agreement by Guarantor and Creditor, all reasonable out-of-pocket costs and expenses incurred by Creditor in the enforcement of the Guarantor's obligations or collection under this Guaranty, including reasonable attorney's fees and expenses (collectively, the "Obligations"). [Optional provision: Notwithstanding anything to the contrary herein, the liability of the Guarantor under this Guaranty and Creditor's right of recovery hereunder for all Obligations is limited to a total aggregate amount of \$ \_\_\_\_ ("Guaranty Amount"), where Guaranty Amount shall be no less than Five Hundred Thousand US Dollars (\$500,000).]
- (b) The limitations on liabilities of the Supplier set forth in Article 10 of the FSA shall also apply to the liabilities of the Guarantor hereunder.

2. Nature of Guaranty; Waivers.

- (a) This is a guaranty of payment and not of collection and the Creditor shall not be required, as a condition of the Guarantor's liability, to pursue any rights which may be available to it with respect to any other person who may be liable for the payment of the Obligations. This is not a performance guaranty and the Guarantor is not obligated to provide power under the FSA or this Guaranty.

- (b) This Guaranty is an absolute, unconditional, irrevocable (subject to the provisions of Section 12 of this Guaranty) and continuing guaranty and will remain in full force and effect until all of the Obligations have been indefeasibly paid in full, or until the FSA has been terminated, whichever comes later. This Guaranty will not be affected by any surrender, exchange, acceptance, compromise or release by the Creditor of any other party, or any other guaranty or any security held by it for any of the Obligations, by any failure of the Creditor to take any steps to perfect or maintain its lien or security interest in or to preserve its rights to any security or other collateral for any of the Obligations or any guaranty, or by any irregularity, unenforceability or invalidity of any of the Obligations (other than any irregularity, unenforceability or invalidity of any of the obligations under the FSA resulting from the conduct of the Creditor) or any part thereof.
- (c) Except as to any claims, defenses, rights of set-off or to reductions of Supplier in respect of its obligations under the FSA, (all of which are expressly reserved under this Guaranty), the Guarantor's obligations hereunder shall not be affected, modified or impaired by any counterclaim, set-off, deduction or defense based upon any claim the Guarantor may have against Supplier or the Creditor, including: (i) any change in the corporate existence (including its charter or other governing agreement, laws, rules, regulations or powers), structure or ownership of Supplier or the Guarantor; or (ii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting Supplier or its assets; or (iii) the invalidity or unenforceability in whole or in part of the FSA; or (iv) any provision of applicable law or regulations purporting to prohibit payment by Supplier of amounts to be paid by it under the FSA (other than any law or regulation that eliminates or nullifies the obligations under the FSA).
- (d) Guarantor waives notice of acceptance of this Guaranty, diligence, presentment, notice of dishonor and protest and any requirement that at any time any person exhaust any right to take any action against Supplier or their assets or any other guarantor or person, provided, however, that any failure of Creditor to give notice will not discharge, alter or diminish in any way Guarantor's obligations under this Guaranty. The Guarantor waives all defenses based on suretyship or impairment of collateral or any other defenses that would constitute a legal or equitable discharge of Guarantor's obligations, except any claims or defenses of Supplier in respect of its obligations under the FSA.
- (e) The Creditor at any time and from time to time, without notice to or the consent of the Guarantor, and without impairing or releasing, discharging or modifying the Guarantor's liabilities hereunder, may (i) to the extent permitted by the FSA, change the manner, place, time or terms of payment or performance of, or other terms relating to, any of the Obligations; (ii) to the extent permitted by the FSA, renew, substitute, modify, amend or alter, or grant consents or waivers relating to any of the Obligations, or any other guaranties for any Obligations; (iii) settle, compromise or deal with any other person, including Supplier, with respect to any Obligations in such manner as the Creditor deems appropriate in its sole discretion; (iv) substitute, exchange or release any guaranty; or (v) take such actions and exercise such remedies hereunder as Creditor deems appropriate.

3. Representations and Warranties. The Guarantor hereby represents and warrants that:
- (a) it is a [limited liability company, corporation, limited partnership, general partnership] duly organized, validly existing and in good standing under the laws of the jurisdiction of its [formation, organization, incorporation] and has the [corporate power] [power] and authority to conduct the business in which it is currently engaged and enter into and perform its obligations under this Guaranty;
  - (b) it has the [corporate power] [power] and authority and the legal right to execute and deliver, and to perform its obligations under, this Guaranty, and has taken all necessary [corporate action] [action] to authorize its execution, delivery and performance of this Guaranty;
  - (c) this Guaranty constitutes a legal, valid and binding obligation of the Guarantor enforceable in accordance with its terms, except as affected by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting the enforcement of Creditors' rights generally, general equitable principles and an implied covenant of good faith and fair dealing;
  - (d) the execution, delivery and performance of this Guaranty will not violate any provision of any requirement of law or contractual obligation of the Guarantor (except to the extent that any such violation would not reasonably be expected to have a material adverse effect on the Guarantor or this Guaranty);
  - (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or governmental authority and no consent of any other person (including, without limitation, any stockholder or creditor of the Guarantor) is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty, other than any which have been obtained or made prior to the date hereof and remain in full force and effect; and
  - (f) no litigation, investigation or proceeding of or before any arbitrator or governmental authority is pending or, to the knowledge of the Guarantor, threatened by or against the Guarantor that would have a material adverse effect on this Guaranty.
4. Repayments or Recovery from the Creditor. If any demand is made at any time upon the Creditor for the repayment or recovery of any amount received by it in payment or on account of any of the Obligations, including but not limited to upon the bankruptcy, insolvency, dissolution or reorganization of the Supplier and if the Creditor repays all or any part of such amount by reason of any judgment, decree or order of any court or administrative body or by reason of any settlement or compromise of any such demand, the Guarantor (subject to Sections 2 (c) and (d) of this Guaranty) will be and remain liable hereunder for the amount so repaid or recovered to the same extent as if such amount had never been received originally by the Creditor. The provisions of this section will be and remain effective notwithstanding any contrary action which may have been taken by the Guarantor in reliance upon such payment, and any such contrary action so taken will be without prejudice to the Creditor's rights hereunder and will be deemed to have been conditioned upon such payment having become final and irrevocable.



5. Enforceability of Obligations. No modification, limitation or discharge of the Obligations of Supplier arising out of or by virtue of any bankruptcy, reorganization or similar proceeding for relief of debtors under federal or state law will affect, modify, limit or discharge the Guarantor's liability in any manner whatsoever and this Guaranty will remain and continue in full force and effect and will be enforceable against the Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted. The Guarantor waives all rights and benefits which might accrue to it by reason of any such proceeding and will be liable to the full extent hereunder, irrespective of any modification, limitation or discharge of the liability of Supplier that may result from any such proceeding.
6. Postponement of Subrogation. Only to the extent that, at the relevant time, there are Obligations, or other amounts hereunder, that are then due and payable but unpaid, the Guarantor postpones and subordinates in favor of the Creditor any and all rights which the Guarantor may have to (a) assert any claim against the Supplier based on subrogation rights with respect to payments made by Guarantor hereunder and (b) any realization on any property of the Supplier, including participation in any marshalling of the Supplier's assets. Upon payment of such due and unpaid Obligations, Creditor agrees that Guarantor shall be subrogated to the rights of Creditor against Supplier to the extent of Guarantor's payment to Creditor.
7. Notices. All notices, demands, requests, consents, approvals and other communications required or permitted hereunder must be in writing and will be effective upon receipt. Such notices and other communications may be hand-delivered, sent by facsimile transmission with confirmation of delivery and a copy sent by first-class mail, or sent by nationally recognized overnight courier service, to the addresses for the Creditor and the Guarantor set forth below or to such other address as one may give to the other in writing for such purpose:

All communications to Creditor shall be directed to:

Attn:

Phone:

Fax:

With a copy to:

Phone

Fax

or such other address as the Creditor shall from time to time specify to Guarantor.

All communications to Guarantor shall be directed to:

Attn:

Phone:

Fax:

- or such other address as the Guarantor shall from time to time specify to Creditor.
8. Preservation of Rights. Except as provided by any applicable statute of limitations, no delay or omission on the Creditor's part to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power, nor will the Creditor's action or inaction impair any such right or power. The Creditor's rights and remedies hereunder are cumulative and not exclusive of any other rights or remedies which the Creditor may have under other agreements with the Guarantor, at law or in equity.
  9. Illegality. In case any one or more of the provisions contained in this Guaranty should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.
  10. Amendments. No modification, amendment or waiver of any provision of this Guaranty nor consent to any departure by the Guarantor therefrom, will be effective unless made in a writing signed by the Creditor, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Guarantor in any case will entitle the Guarantor to any other or further notice or demand in the same, similar or other circumstance.
  11. Entire Agreement. This Guaranty (including the documents and instruments referred to herein) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between the Guarantor and the Creditor with respect to the subject matter hereof.
  12. Successors and Assigns. This Guaranty will be binding upon and inure to the benefit of the Guarantor and the Creditor and their respective successors and permitted assigns. Neither party may assign this Guaranty in whole or in part without the other's prior written consent, which consent will not be unreasonably withheld or delayed, except that Creditor may at any time assign this Guaranty without Guarantor's consent, in the same manner, on the same terms and to the same persons as Creditor assigns the FSA in accordance with Section 16.7(b) of the FSA, and except that this Section 12 shall not limit the Guarantor's right to assign this Guaranty, along with substantially all of the Guarantor's assets and business to a successor entity or Affiliate that assumes all obligations thereunder and (i) where the successor Guarantor's Lowest Credit Rating is equal to or greater than the Guarantor's Lowest Credit Rating or where the successor Guarantor's Lowest Credit Rating is equal to or greater than BBB, as rated by S&P or Fitch, or Baa2, as rated by Moody's, and (ii) the Supplier is in compliance with Article 14 of the FSA. The "Lowest Credit Rating" shall mean the lowest of the senior unsecured long-term debt ratings determined by Moody's Investor Services, Inc. (or its successor) ("Moody's"), the Standard & Poor's Rating Group, a division of McGraw-Hill, Inc., (or its successor) ("S&P"), or Fitch Investor Service, Inc. (or its successor) ("Fitch") immediately before such transfer and assumption. Upon any such delegation and assumption of obligations by a successor Guarantor, the Guarantor shall be relieved of and fully discharged from all of its obligations hereunder, whether such obligations arose before or after the date of such delegation and assumption.
  13. Interpretation. In this Guaranty, unless the Creditor and the Guarantor otherwise agree in writing, the singular includes the plural and the plural the singular; references to

statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referred to; the word "or" shall be deemed to include "and/or", the words "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; and references to sections or exhibits are to those of this Guaranty unless otherwise indicated. Section headings in this Guaranty are included for convenience of reference only and shall not constitute a part of this Guaranty for any other purpose.

14. Governing Law.

- (a) This Guaranty has been delivered to and accepted by the Creditor. THIS GUARANTY WILL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE CREDITOR AND THE GUARANTOR DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, EXCLUDING ITS CONFLICT OF LAWS RULES.
- (b) The Guarantor hereby irrevocably consents to the non-exclusive jurisdiction of any federal court in the State of Delaware, but in the event that the Guarantor and the Creditor determine in good faith that jurisdiction does not lay with such court or that such court refuses to exercise jurisdiction or venue over the Guarantor and the Creditor or any claims made pursuant to this Guaranty, then the Guarantor and the Creditor agree to submit to the non-exclusive jurisdiction of the Delaware state courts; provided that nothing contained in this Guaranty will prevent the Creditor from bringing any action, enforcing any award or judgment or exercising any rights against the Guarantor individually, against any security or against any property of the Guarantor within any other county, state or other foreign or domestic jurisdiction. The Guarantor acknowledges and agrees that the venue provided above is the most convenient forum for both the Creditor and the Guarantor. The Guarantor waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Guaranty.

15. WAIVER OF JURY TRIAL. THE GUARANTOR AND CREDITOR IRREVOCABLY WAIVE ANY AND ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS GUARANTY, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS GUARANTY OR ANY TRANSACTION CONTEMPLATED IN ANY OF SUCH DOCUMENTS. THE GUARANTOR AND CREDITOR ACKNOWLEDGE THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.

16. Term. This Guaranty shall survive termination of the FSA and remain in full force and effect until all amounts due hereunder, including all of the Obligations, have been paid or performed in full.

17. Stay of Acceleration Ineffective with Respect to Guarantor. If acceleration of the time for payment of any amount payable by Supplier under the FSA is stayed upon the insolvency, bankruptcy or reorganization of Supplier, all such amounts otherwise subject to acceleration or required to be paid upon an early termination pursuant to the terms of the FSA shall nonetheless be payable by the Guarantor hereunder on written demand by Creditor.

The Guarantor acknowledges that it has read and understood all the provisions of this Guaranty, and has been advised by counsel as necessary or appropriate.

[Guarantor]

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT G**

**FORM OF NOTICE**

Please provide specific personnel contact information and notify Buyer in advance should such contact or banking information change.

Any notices required under this Agreement shall be made as follows:

**Buyer:**

**Seller:**

**All Notices:**

**All Notices:**

Street:

Street:

City/State/Zip:

City/State/Zip

Attn:

Attn:

Facsimile:

Facsimile:

Duns:

Duns:

Federal Tax ID Number:

Federal Tax ID Number:

**Invoices:**

**Invoices:**

Attn:

Attn:

Phone:

Phone:

Facsimile:

Facsimile:

**Scheduling:**

**Scheduling:**

Attn:

Attn:

Phone:

Phone:

Facsimile:

Facsimile:

**Payments:**

**Payments:**

Attn:

Attn:

Phone:

Phone:

Facsimile:

Facsimile:

**Electronic Funds Transfer<sup>(1)</sup>:**

**Electronic Funds Transfer<sup>(1)</sup>**

BNK:

BNK:

Fed-ABA:

Fed-ABA:

ACH-ABA

ACH-ABA

ACCT Name:

ACCT Name:

ACCT No:

ACCT No:

**Credit and Collections:**

Attn:  
Phone:  
Facsimile:

**With additional Notices of an  
Event of Default to:**

Attn:  
Phone:  
Facsimile:

**Credit and Collections:**

Attn:  
Phone:  
Facsimile:

**With Additional Notices of an  
Event of Default to:**

Attn:  
Phone:  
Facsimile:

**(1) If the bank's ABA number for ACH transfers differs from the Fed wire ABA number please provide both.**

**EXHIBIT H**  
**INCREMENT/DECREMENT LOAD EXAMPLE**

Date	Event	PLC & Load	Notes
01-May	<i>Delivery Period Begins</i>		
	Base PLC per Bid Block, MW	51.0	a
	Base Load Percentage	100%	
31-August	<i>PLC Increase, No Increment Triggered</i>		
	PLC per Bid Block, MW	53.0	b
	Base Load Percentage	100%	$b \leq a+5$
15-Sept.	<i>Increment Triggered</i>		
	PLC per Bid Block, MW	57.0	c
	Base Load Percentage	98.25%	$c > a+5$ , so % = $(a+5)/c$
10-Oct.	<i>Increment Turned Off</i>		
	PLC per Bid Block, MW	55.0	d
	Base Load Percentage	100%	$d \leq a+5$
15-Nov.	<i>Decrement Triggered, New Base PLC</i>		
	PLC per Bid Block, MW	47.0	e
	New Base PLC per Bid Block, MW	48.0	$e \leq a-3$ so $f = a-(1*3)$
	Base Load Percentage	100%	
31-Dec.	<i>End of Calendar Year</i>		
	PLC per Bid Block, MW	50.0	g
	Base Load Percentage	100%	$g \leq f+5$
1-Jan.	<i>New PLCs Effective</i>		
	Unadjusted PLC per Bid Block, MW	52.0	h
	PLC per Bid Block, MW	50.0	$i = h-(h-g)$
	Base Load Percentage	100%	$i \leq f+5$
15-Feb.	<i>Increment Triggered</i>		
	Unadjusted PLC per Bid Block, MW	57.5	k
	PLC per Bid Block, MW	55.5	$l = k-(h-g)$
	Base Load Percentage	95.50%	$l > f+5$ so % = $(f+5)/l$

**EXHIBIT I****DECLARATION OF AUTHORITY**

This Declaration of Authority ("Declaration") is a statement and certification made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_ by Delmarva Power & Light Company, ("Party A") and [Supplier] ("Party B") for the benefit of PJM Interconnection, LLC.

**RECITALS:**

WHEREAS, PJM is a Regional Transmission Organization ("RTO") subject to the jurisdiction of the Federal Energy Regulatory Commission, ("FERC");

WHEREAS, PJM administers centralized markets that clear various electric energy and energy-related products among multiple buyers and sellers;

WHEREAS, PJM additionally exercises operational control over its members' transmission facilities whereby PJM provides control area functions, including economic dispatch, the scheduling of transmission service and emergency response to ensure reliability across an integrated transmission system; and

WHEREAS, in capacities more fully described below, PARTY A and PARTY B seek to participate either directly or indirectly in the markets administered by PJM or engage in operations that use or affect the integrated transmission system operated by PJM.

**DECLARATION**

NOW, THEREFORE, acknowledging that PJM will rely on the truth, accuracy and completeness of the statements made below, PARTY A and PARTY B, as indicated below, provide the following certifications:

1. Certification.

- (a) PARTY B hereby certifies that in all activities with PJM regarding PARTY B's provision of energy, capacity, ancillary services, scheduling and procurement of transmission service, congestion management and all other required products and services necessary to serve the standard offer service load obligation assumed by PARTY B, PARTY B shall be billed and be primarily liable to PJM for all costs associated in its procurement of such products and services; provided, however, that charges for Network Integration Transmission Service, Expansion Cost Recovery assessed to Network Integration Transmission Service customers, Transmission Enhancement assessed to Network Integration Transmission Service customers, and credits for Non-firm Point-to-point Transmission Service shall be billed to PARTY A and remain the sole and primary responsibility of PARTY A.



2. Reliance By PJM On Certifications.

- (a) Each of PARTY A and PARTY B recognizes and accepts that PJM is relying on the truth, accuracy and completeness of the certifications herein made in making its assessments as to creditworthiness and in assuring PJM's own compliance with its tariff, operating agreement, reliability agreement and business practices.
- (b) Each of PARTY A and PARTY B recognizes and accepts that each has a continuing duty to notify PJM if and when the certifications herein made cease to be accurate or complete. Until such time as PJM receives written notification of any changes to such certifications, signed by both PARTY A and PARTY B, PJM shall be entitled to rely perpetually on this Declaration as governing its relationship with PARTY A and PARTY B as to the subject matter of this Declaration. Any written notice of changes to the certifications herein made must be provided to PJM at least thirty days in advance of their effectiveness.
- (c) Each of PARTY A and PARTY B recognize and acknowledge that PJM will receive and rely on individually modeled SOS supplier accounts that contain only zonal-specific SOS load to manually adjust the accounts to move the applicable billing line items' amounts in their entirety from the applicable SOS supplier's account to the applicable EDC's account.
- (d) PARTY A and PARTY B recognize and acknowledge that they have entered into a Full Requirements Service Agreement (FSA) and that this Certification is not intended in any way to change, revise or redistribute the rights and obligations of the PARTY A or PARTY B under the FSA. If this Certification is determined to be inconsistent with any provision of the FSA, with respect to the rights and obligations of PARTY A and PARTY B under the FSA, the provisions of the FSA shall be controlling on PARTY A and PARTY B.

3. Duration. Each of PARTY A and PARTY B acknowledge and agree that this Declaration shall terminate upon the termination of the FSA in accordance with its terms. To this end, within 30 days prior to the termination of the FSA in accordance with its terms or as soon thereafter as is practicable, each of PARTY A and PARTY B will provide written notice to PJM of the termination of this Declaration.

IN WITNESS WHEREOF, PARTY A and PARTY B execute this Declaration to be effective as of the date written above.

PARTY A

\_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

PARTY B

\_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT J**

- 12.3(b) In order to avoid doubt regarding a commercially reasonable calculation for the purposes of calculating the Settlement Amount by the Non-Defaulting Party, the quantity of amounts of Energy, Capacity and other services to have been provided under the FSA for the period following the Early Termination Date (the "Termination Quantity") shall be deemed those quantity amounts that would have been delivered on an hourly basis had the FSA been in effect during the previous calendar year, adjusted for such SOS load changes as have occurred since the previous calendar year. Nothing in this section shall limit the right of the Buyer when Seller is the Defaulting Party to replace Seller's full requirements obligation and the result of any Commission-approved procedure will be deemed to be commercially reasonable for purposes of calculating the Settlement Amount and will be deemed to have been determined by reference to the Termination Quantity.